

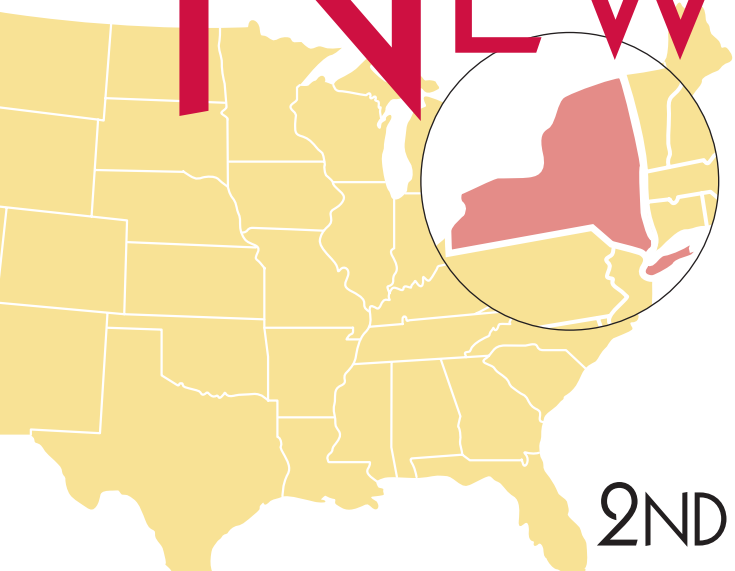
WRITTEN BY LAWYERS

A SIMPLE ENGLISH  
EXPLANATION OF THE LAW

FORMS AND INSTRUCTIONS  
INCLUDED



how to win in  
**SMALL CLAIMS**  
**COURT**  
in **NEW YORK**



**Includes:**

- ◆ Tips on court procedures
- ◆ Court terminology examples
- ◆ Details for collecting your judgment
- ◆ Important forms

2ND EDITION

**James L. Rogers**  
**Mark Warda**  
**Attorneys at Law**

HOW TO WIN  
IN SMALL CLAIMS  
COURT  
IN  
NEW YORK



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IN NEW YORK

Second Edition

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James L. Rogers  
Mark Warda  
Attorneys at Law



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# USING SELF-HELP LAW BOOKS

Before using a self-help law book, you should realize the advantages and disadvantages of doing your own legal work and understand the challenges and diligence that this requires.

## THE GROWING TREND

Rest assured that you won't be the first or only person handling your own legal matter. For example, in some states, more than seventy-five percent of divorces and other cases have at least one party representing him or herself. Because of the high cost of legal services, this is a major trend and many courts are struggling to make it easier for people to represent themselves. However, some courts are not happy with people who do not use attorneys and refuse to help them in any way. For some, the attitude is, "Go to the law library and figure it out for yourself."

We at Sphinx write and publish self-help law books to give people an alternative to the often complicated and confusing legal books found in most law libraries. We have made the explanations of the law as simple and easy to understand as possible. Of course, unlike an attorney advising an individual client, we cannot cover every conceivable possibility.

## COST/VALUE ANALYSIS

Whenever you shop for a product or service, you are faced with various levels of quality and price. In deciding what product or service to buy, you make a cost/value analysis on the basis of your willingness to pay and the quality you desire.

When buying a car, you decide whether you want transportation, comfort, status, or sex appeal. Accordingly, you decide among such choices as a Neon, a Lincoln, a Rolls Royce, or a Porsche. Before making a decision, you usually weigh the merits of each option against the cost.

When you get a headache, you can take a pain reliever (such as aspirin) or visit a medical specialist for a neurological examination. Given this choice, most people, of course, take a pain reliever, since it costs only pennies; whereas a medical examination costs hundreds of dollars and takes a lot of time. This is usually a logical choice because it is rare to need anything more than a pain reliever for a headache. But in some cases, a headache may indicate a brain tumor and failing to see a specialist right away can result in complications. Should everyone with a headache go to a specialist? Of course not, but people treating their own illnesses must realize that they are betting on the basis of their cost/value analysis of the situation. They are taking the most logical option.

The same cost/value analysis must be made when deciding to do one's own legal work. Many legal situations are very straight forward, requiring a simple form and no complicated analysis. Anyone with a little intelligence and a book of instructions can handle the matter without outside help.

But there is always the chance that complications are involved that only an attorney would notice. To simplify the law into a book like this, several legal cases often must be condensed into a single sentence or paragraph. Otherwise, the book would be several hundred pages long and too complicated for most people. However, this simplification necessarily leaves out many details and nuances that would apply to special or unusual situations. Also, there are many ways to interpret most legal questions. Your case may come before a judge who disagrees with the analysis of our authors.

Therefore, in deciding to use a self-help law book and to do your own legal work, you must realize that you are making a cost/value analysis. You have decided that the money you will save in doing it yourself

outweighs the chance that your case will not turn out to your satisfaction. Most people handling their own simple legal matters never have a problem, but occasionally people find that it ended up costing them more to have an attorney straighten out the situation than it would have if they had hired an attorney in the beginning. Keep this in mind if you decide to handle your own case, and be sure to consult an attorney if you feel you might need further guidance.

#### LOCAL RULES

The next thing to remember is that a book which covers the law for the entire nation, or even for an entire state, cannot possibly include every procedural difference of every county court. Whenever possible, we provide the exact form needed; however, in some areas, each county, or even each judge, may require unique forms and procedures. In our *state* books, our forms usually cover the majority of counties in the state, or provide examples of the type of form that will be required. In our *national* books, our forms are sometimes even more general in nature but are designed to give a good idea of the type of form that will be needed in most locations. Nonetheless, keep in mind that your *state*, county, or judge may have a requirement, or use a form, that is not included in this book.

You should not necessarily expect to be able to get all of the information and resources you need solely from within the pages of this book. This book will serve as your guide, giving you specific information whenever possible and helping you to find out what else you will need to know. This is just like if you decided to build your own backyard deck. You might purchase a book on how to build decks. However, such a book would not include the building codes and permit requirements of every city, town, county, and township in the nation; nor would it include the lumber, nails, saws, hammers, and other materials and tools you would need to actually build the deck. You would use the book as your guide, and then do some work and research involving such matters as whether you need a permit of some kind, what type and grade of wood are available in your area, whether to use hand tools or power tools, and how to use those tools.

Before using the forms in a book like this, you should check with your court clerk to see if there are any local rules of which you should be aware, or local forms you will need to use. Often, such forms will require the same information as the forms in the book but are merely laid out differently, use slightly different language, or use different color paper so the clerks can easily find them. They will sometimes require additional information.

CHANGES IN  
THE LAW

Besides being subject to state and local rules and practices, the law is subject to change at any time. The courts and the legislatures of all fifty states are constantly revising the laws. It is possible that while you are reading this book, some aspect of the law is being changed or that a court is interpreting a law in a different way. You should always check the most recent statutes, rules and regulations to see what, if any changes have been made.

In most cases, the change will be of minimal significance. A form will be redesigned, additional information will be required, or a waiting period will be extended. As a result, you might need to revise a form, file an extra form, or wait out a longer time period; these types of changes will not usually affect the outcome of your case. On the other hand, sometimes a major part of the law is changed, the entire law in a particular area is rewritten, or a case that was the basis of a central legal point is overruled. In such instances, your entire ability to pursue your case may be impaired.

Again, you should weigh the value of your case against the cost of an attorney and make a decision as to what you believe is in your best interest.

# INTRODUCTION

New York's small claims court system provides a useful procedure for collecting small debts. Many claims are too small to warrant the services of an attorney, but too big to ignore.

Simply filing a small claims case often gets results from people who know they owe money but have not gotten around to paying it. Being brought before a judge is not something people look forward to, and sometimes delivery of a summons brings an immediate check. On the other hand, going through the whole case and winning a judgment may be useless. If a person has no money, there is nothing for you to collect.

While the small claims court was designed to make it possible to take court action without the expense of an attorney, legal advice can be very valuable in determining whether or not to sue, or deciding what claims or defenses to present. If you do not have an attorney, you can probably get an initial consultation for a reasonable fee through the New York Lawyer Referral Service at 800-342-3661.

Before filing your case it is advisable to read this entire text. Sometimes information relating to the end of the process is important in planning the beginning, or a decision made in the beginning may affect the procedures in the end.

This is the second edition of *How to Win in Small Claims Court in New*

*York.* In addition to updating various changes in the law that have occurred since publishing the first edition, this new edition adds even more examples based on actual cases fought in small claim courts in New York. It contains additional types of claims that plaintiffs may want to consider bringing in small claims, such as claims based on wages owed by an employer, deceptive business practices, false advertising, fraud and several other possible claims that have all been pursued by other litigants in small claims. Various format changes have been made to make this edition even *more* user friendly.

With all of these changes, we believe that this book will serve you well in answering most of your questions as a litigant in small claims court. In the end you will be better prepared, whether you are the plaintiff pursuing an action or whether you are the defendant who has been sued in small claims court.

# INTRODUCTION TO SMALL CLAIMS COURT

# 1

*Small claims court* is a simple, informal, and inexpensive procedure for the prompt determination of a claim in accordance with basic legal principles. The parties do not need to be represented by a lawyer, and the rules of procedure are simplified so that the technical rules usually used in court are not applied.

Persons winning a case in small claims court are granted a *judgment*. This is a court order stating that they are entitled to a sum of money. In some cases the judgment is not worth anything, for example when the other person does not have the money to pay it. But with persistence, money can often be collected on a judgment. A judgment can be good for twenty years as a *lien* (a legal right over property until a judgment is paid) on any property owned by the person it is made against. (See Chapter 8, "Collecting Your Judgment.")

## TYPES OF CASES THAT CAN BE HEARD

Small claims court is used to collect small sums of money. As of the date of publication of this book, the limit in small claims court is \$3,000. You should check with your court clerk to see if the limit has been changed.

If your claim is for more than the limit of small claims court, you may still use small claims court if you are willing to accept an amount up to the limit.



If someone owes you \$3,500 you may want to sue in small claims court and be happy with a judgment for \$3,000. This would be better than hiring a lawyer to sue for the whole \$3,500 in a regular part of the court, considering his or her fees would probably be more than the \$500 you would have to forego in small claims court. If you sue for a debt greater than the limit, the defendant may ask that your case be thrown out because it exceeds the limit. Therefore, you should make clear in your court papers or to the judge at the hearing that you wish to waive all amounts over the limit.

Another possibility is to divide your claim into several suits, each of which is under the limit.

**Example:** Anne loaned Fred \$2000 on two different occasions. Neither debt was repaid, so she treated each loan as a separate transaction and filed two suits for \$2000 each. (However, if she gave him one check for \$4000 she probably could not break it into two suits to get into small claims court.)

The person you are suing may try to have the suits combined in order to lower the amount of the possible judgment, so you should be prepared to explain to the judge why the matters are separate transactions.

## NEEDING AN ATTORNEY

If your case is simple and you have the time to do the work yourself, you probably do not need an attorney. Small claims court is designed for people who do not plan to use an attorney. But if the issues are complicated, you may wish to at least consult with an attorney for advice in handling your case. Some attorneys will provide advice at an hourly rate without actually handling the case in court.

In most cases, each party must pay his or her own attorney's fees, no matter who wins. But in some cases, such as when a written contract allows attorney's fees, the loser must pay the winner's attorney's fees. If

your case is like this, then it is important to get the advice of an attorney before filing your case, especially if the other side is expected to have an attorney. Otherwise, a simple mistake on your part may result in the other side winning the case, plus attorney's fees.

Any time the other side hires an attorney you should consider consulting one. Although the judges are supposed to be flexible with the rules, a good lawyer may help avoid fatal flaws in your case.

If you consult an attorney on your case, you might be able to get the other side to pay your attorney fees. The loser can be required to pay attorney fees if there is a written contract in which it is stated. The other side will probably argue that since the attorney did not appear in court you are not entitled to fees, but you should argue that you did consult an attorney concerning the case and kept the fees down by not having the lawyer spend unnecessary time in court. Be sure to have a bill from the lawyer to present to the judge.

## WHERE YOU CAN GET HELP

The court clerks are supposed to help you prepare the necessary statement to start your case, as well as assist you with enforcing your claim should you obtain a judgment and the defendant refuses to pay you.

You should *always listen carefully to the advice of the clerk*. If he or she says that something is important in your case, do not assume you have a better idea unless you are sure the law says otherwise. Although most court clerks are not attorneys, they have gained a lot of practical legal knowledge through their employment and will often thoroughly know the procedures that you must follow.

The majority of the law that the court follows in small claims cases is contained in Appendix A of this book. If you have any questions about how a procedure works, you should check these rules. These laws can often be found in the legal section of your library. In some instances, you may have to go to a law library, such as at a law school, to obtain these references.

## WHAT YOU CAN RECOVER

As a general rule, you can only recover actual out-of-pocket losses *directly* relating to the subject matter of the suit.

**Example:** If you are suing a cleaning service for ruining a dress or an auto mechanic for improperly repairing your car, you can sue for the value of the dress or for the cost of proper repairs. You cannot recover for the fact that you missed a job interview or party because you did not have the dress or car. Nor can you recover lost wages for time you spent in court or your travel costs to court, even if you had to fly in from out-of-state.

In a personal injury case there may be more damages related to the accident.

**Example:** In a car accident you may have medical bills, lost pay from missing work, damage to your car, and pain and suffering.

If you are the *prevailing party*, meaning you won on a significant issue in the case, then you will usually be awarded *disbursements* of the suit. This almost always includes the cost of filing your small claims action and can also include costs for enforcing your judgment.

As discussed in the next chapter, you should ask for as much as possible within the small claims court limit in order to improve your negotiating position (even if you know you will not be granted everything in court), but as a practical matter, you usually will not get much more than out-of-pocket losses.

**NOTE:** *There are several terms used in small claims court. Familiarize yourself with the terms contained in the glossary and refer to the glossary as the words are used throughout the text.*

# BEFORE YOU SUE 2

Before you file a case in any court you should first analyze whether it is worth your time and effort to go through the whole process. You want to file a case because you are upset about something, but it will be even more upsetting if you lose, especially if you end up paying damages to the other side. Most cases settle out of court, because you can never predict what result you will get in court. Even if you are right and have a strong case, the court can rule the other way for any number of reasons.

## YOUR CASE

In order to win a lawsuit against someone, you must be able to prove they are liable under some acceptable legal theory. In many instances, a person who has clearly suffered a loss may not be able to win their case because the law does not place the liability on another person. Before filing your case you must find a legal theory which will allow you to collect. Some cases are easy. If a person did something intentionally (like break your window) or failed to do something which was legally required (like pay back a loan), then you have a clear case.

But in other cases you must use a more complicated theory, such as *negligence* or *implied warranty*. In cases like these you will only win if the facts of your case fit into the legal definitions of negligence or implied

warranty. If you are struck by lightning while walking at Disney World, the owners will probably not be liable because the courts consider lightning an “act of God” and not the legal responsibility of the landowner. (A person once tried to sue God for an act of God. He served the papers on a local church as an “agent of God.” But the court said that the church was not legally able to accept service of process for God so the court “did not have jurisdiction over the defendant.”)

**Example:** Bill rented a house from a landlord. When he signed the lease, he agreed to take care of minor maintenance and the landlord agreed to charge him less rent. Bill fixed a board on the steps and later it broke and he fell, breaking his leg. Although the landlord owns the property and has insurance against liability, he did not have to pay for Bill’s broken leg, because he had the duty to maintain the premises and was the one who improperly fixed the step that broke.

If you signed a contract or received any papers from the other party relating to the transaction, you should read them before filing suit. Sometimes they will limit your legal rights or your right to bring suit. If a business made promises about a product, but the contract said the product was sold “as is” and that “oral representations cannot be relied upon,” you may be out of luck. Or if your contract with your stock broker says that you agree to arbitration, you may have given up your right to sue.

In some cases, the papers used by the party may not have any legal effect. A lease may say that a landlord is not liable for injuries on the premises, but in some instances New York law says otherwise and this overrules the wording of the lease. A ticket you receive when bringing an item for repair may say that the repair shop is not liable if the item is lost or destroyed, but New York law may allow you to recover anyway.

If you have any doubts about your rights you should check with an attorney or do some research yourself. Many types of claims are

explained in this book, but if you are industrious you may want to do some extra legal research to find other grounds for your suit. You can do legal research at the law library found in most county courthouses or in many law schools. There are also several books on the market explaining how to do legal research.

## PROVING YOUR CASE

Even if you have a good case, you will not win if you do not have enough proof to convince the judge that you are right. If all you have is a verbal agreement, it will be your word against the defendant's and the judge will have to decide who is more believable. If you do not have any evidence and the other side has evidence that supports his or her side of the case, you will be less likely to win.

Be sure to read the rules of evidence in Chapter 8. Also, ask your friends what they see as the best points of the other side's case. As a participant in the situation, you will not be able to effectively judge the other side's arguments. Your friends may provide an objective opinion. If there is a chance you will be countersued, you should consider consulting with an attorney. He or she may be able to point out a legal rule or other reason that you could lose the case.

## YOUR TIME AND EFFORT

Not all claims are worth bringing to court. Sometimes it may cost you more to miss work for two hearings than the claim is actually worth. If there is a chance you will be countersued you are risking more than just your time and effort.

Of course, in many cases the principle is more important than the money, and you may want to get justice from someone who took advantage of you. But be sure to consider what the case will involve before you start it.

You should also consider that it might not be worth the time and effort for the other side to fight your case. If the amount involved is small and they will have to take off work or hire an attorney, they may just settle without a trial. So merely filing the case may get results.

## COLLECTING IF YOU WIN

If the person you want to sue has no money, it may be a waste of time to go to court. In New York, a large amount of a debtor's property is exempt from creditor's claims. So a judgment you spent time and court costs to obtain may end up being a worthless piece of paper. (See Chapter 8, "Collecting Your Judgment" for more information on exempt property of a judgment debtor.)

The best party to sue is a large corporation or a person with a lot of *real estate* or other *assets*. (You can check the property records in the courthouse and the state motor vehicle records to see what a person owns.) If you have a valid claim, a large corporation will probably pay you rather than spend the money to defend itself. If you are suing a person who owns real estate, your judgment can be placed as a *lien* on all of their holdings for up to twenty years.

The worst parties to sue are small corporations with no assets or people who have no assets and are supporting a family. If you are not sure whether the party is worth suing, you should read Chapter 8 before filing your claim. It explains how to find out what a person's assets are.

**Warning:** You should not sue anyone unless you have a valid claim. If you file a suit and the judge decides there is really no legal or factual merit to it, he or she may place a judgment against *you* for all of the other party's attorney's fees and court costs.

## BEFORE FILING YOUR SUIT

Before filing your suit you should attempt to work it out with the other person. People sometimes come to court and say they have not paid an

amount owed because they were never asked. Even if you have asked the person to settle the matter, you should send at least one letter and keep a copy of it. This can be used as evidence in court that you have tried to resolve the matter.

In some counties there are *mediation* or *arbitration* services (alternative settings to court used to resolve disputes). If you think it might help, you should contact them before filing your suit and try to work something out with the other party.

When negotiating to settle a case you should be sure not to let the time limit pass for filing your case. There is a law called the *statute of limitations*, which gives time limitations as to when each type of suit can be filed. Once the deadline has passed, the claim is forever barred and may not be sued upon.

For a suit against a physician for medical malpractice the limit is two years and six months, but for a suit against a municipality such as a city, county, town, or village the limit is one year and ninety days. For other types of suits see Chapter 4.

If the limitations deadline is near and the person you are negotiating with seems to be delaying, you may have to file your suit to avoid missing the deadline. One way to avoid the deadline without filing suit is to have the person sign a *promissory note* (an agreement to pay a debt owed). This is considered a new agreement and the limitation period is six years from the date the final payment is due.

Small claim court actions are governed by Article 18 of the Uniform City Court Act, the New York City Civil Court Act, the Uniform District Court Act, or the Uniform Justice Court Act depending on which court you are using to sue the defendant. (Chapter 3 describes which court you should use.) Article 18 of each of these court acts are nearly identical and a copy of Article 18 of the Uniform City Court Act is included for your convenience in Appendix A. Aside from these Acts, your case will be governed by cases and statutes particular to the type of action which you are bringing against the defendant.





# FILING YOUR CASE

# 3

One of the most important parts of any lawsuit is determining whether you have the right to sue another person and where should you bring your lawsuit. This chapter will deal with these very important issues.

## THOSE WHO MAY SUE

### INDIVIDUALS

You, as an individual, may use the small claims court to recover money that you believe someone owes you. Remember that the most money you can sue for in small claims court is \$3,000.

No one can use the small claims court as a means to harass another person. The clerk of the court can make anyone who may be using the court for harassment to make a *special application* to the court for a determination as to whether the claim can be brought. The circumstances warranting such an application might be when a person is suing after having lost the same exact case in a previously filed court action.

### PARTNERSHIPS AND ASSOCIATIONS

A partnership or an association can not sue in the small claims part of the court. However, partnerships and associations can sue for the maximum amount permitted for a small claim (\$3,000) in the commercial claims part of the appropriate court. Although the proper term for where a partnership and association may sue is called the “commercial claims part,” the physical location of this part of court will be in the

same location as the small claims part of the court. No partnership or association can bring more than five such commercial claims per month.

The rules for commercial claims are very similar to the rules for small claims. Thus all the rules in this book apply to commercial claims brought by partnerships and associations. These differences are stated where they exist.

#### CORPORATIONS

With the exception of nonprofit corporations, a corporation can not sue in the small claims part of the court. However, a corporation that has its principal office in the state of New York can sue for the maximum amount permitted for a small claim (\$3,000) in the commercial claims part of the court. Although the proper term for where a corporation may sue is called the “commercial claims part,” the physical location of this part of court will be in the same location as the small claims part of the court. A corporation is limited to bringing five such commercial claims per month.

*NOTE: The rules for commercial claims are very similar to the rules for small claims and differences are stated in this book when they exist.*

A corporation may appear as a party in a commercial claim action by any authorized officer, director or employee of the corporation who has the requisite authority to bind the corporation in a settlement or trial. In the alternative, the corporation may appear by an attorney.

#### TRUSTEES AND FIDUCIARIES

*Trustees and fiduciaries*, such as personal representatives of estates or guardians, may sue as long as they properly identify their capacity.

#### INFANTS AND INCOMPETENTS

*Infants*, defined as persons under the age of eighteen, must sue through a proper representative, such as a parent having legal custody or a guardian of the infant’s property, unless the court appoints a *guardian ad litem*. A person who has been judicially declared incompetent must appear in court represented by the *conservator* of his or her property.

#### MULTIPLE PARTIES

If there are other persons who have suffered the same harm as you, it may be possible to file a single small claims action rather than bringing individual suits. For example, if you are just one of several people to

whom a defendant refused to pay wages due, then each of you should be able to file one action against your employer to recoup those wages owed. This could save you not only on filing fees, but also strengthen your case at trial because each of you can show up on the same day at trial and testify.

## WHO YOU CAN SUE

It is important to sue the correct party, or your judgment may be worthless. Even worse, you may have to pay for a person's attorney's fees if you sue him or her without good legal grounds.

### INDIVIDUALS

Be sure to get the exact name of the party you are suing. Do not sue "Mr. & Mrs. Smith." You need to have the correct spelling of their full names. If you do not know their middle names it is not crucial, but it is best to be precise.

### SPOUSES

Whenever you have legal grounds, you should sue both spouses. If you get a judgment against just one person and he or she owns property with a spouse, you may not be able to put a lien on it or seize it. But a judgment against both a husband and wife can be filed as a lien against all of the property owned by either or both of them. Whenever you have a plausible legal reason to sue a spouse, do it. For example, if you are trying to collect back rent from a tenant, even if only one party usually paid the rent, you could argue that both were tenants and one was the agent of the other.

### MINORS AND INCOMPETENTS

You cannot sue a person under eighteen years of age or an incompetent person, unless you also sue his or her guardian or have one appointed by the court. For an injury caused by a minor, you could sue his or her natural parents in most cases. Having a guardian appointed by the court would require the services of an attorney.

### CORPORATIONS

A corporation with assets is a good target, but a "shell" corporation with no assets is not. It can be dissolved, making your claim worthless. An individual may have no assets or may file bankruptcy, but it is not as likely or as easy as dissolving a shell corporation. A new corporation can always be started, but an individual is stuck with his credit record for years.

In such a case, it is better if you can sue some of the individuals in the corporation. This can be done if the individuals signed documents without their corporate titles, or if the company name was used without the words “Inc.,” “Corp.,” or “Co.” after it, or if the individuals committed some sort of fraud. It can also be done when a corporation does not have enough money to run as a corporation and in a few other circumstances.

*NOTE: Ignoring a corporate entity and suing the individuals behind it is called “piercing the corporate veil.” Much has been written about this in legal books and periodicals. If you think you will need to pierce a corporate veil to win your case, you should research the subject further in your nearest law library.*

#### PARTNERSHIPS

You cannot sue a partnership as such. You must sue the individuals who are the partners. If you do not know who the partners are, you should read the following section. For a *limited partnership* you need only sue the general partners. However, your judgment will only be against assets of the partnership and the general partners. The personal assets of the limited partners are not subject to claims against the partnership.

#### COUNTIES, CITIES, TOWNS AND VILLAGES

You can bring a lawsuit against a county, city, town, or village in small claims court. However, if your claim is for the negligence of such a county, city, town or village (also called a *public corporation*), you must serve what is called a *notice of claim* within ninety days from the time that the negligent act occurs. If you do not file this notice of claim, your suit may be barred. Service of a notice of claim can be waived in some small claims courts, but in others it is a law that you must follow.

Your notice of claim must be:

- in writing;
- sworn to by, or on behalf of yourself;
- include your name and address;
- include the nature of your claim; and,
- include the time when, the place where, and the manner in which your claim arose.

You must also set forth the items of damage or injuries you are claiming to the extent possible.

You must serve your notice of claim upon the county, city, town, or village you plan to sue by either delivering it personally or by sending it by registered or certified mail to the appropriate person designated to receive such service. Generally, the safest way to insure that you have served this notice on the proper person is to serve it upon the attorney who represents such county, city, town or village, although there are other options available to you under the Civil Procedure Law and Rules depending on the type of public corporation you want to sue.

A form that you can tailor for your NOTICE OF CLAIM appears in Appendix C. (see form 3, p.111.) If you want more information on a notice of claim, see the New York General Municipal Law, Section 50-(e)(I).

SCHOOL  
DISTRICTS

You can sue a school district. However, before bringing such an action you must provide the governing body of the school district with a notice of your claim within 3 months after the act you are suing over occurred.

Your notice must include the nature of your claim, the time when, the place where, and the manner in which your claim arose. Where the action involves a contractual dispute, you must also provide a monetary demand and some suggestion on how your sum is arrived at or the damages occurred. If you want more information on this type of notice of claim, see New York Education Law Section 3813(1).

FICTITIOUS  
NAMES

You cannot sue a “company” unless it is a corporation. If it is a sole proprietorship or a partnership, you must name the individuals and add “d/b/a” (doing business as) and then the company name. For example you might sue:

John Smith d/b/a Smith Company, or  
John Smith, Raymond Smith and William Smith  
d/b/a Smith Enterprises, a partnership

If you do not know who the principals of the business are, you can look them up. Under New York’s General Business Law, Section 130, no person may conduct a business in New York under any name other than his

or her real name, unless he or she files a certificate in the office of the clerk of each county in which the business is conducted. Any person who knowingly fails to comply with this law is guilty of a misdemeanor and will be prohibited from bringing any lawsuit on any contract made in this *fictitious name* until a certificate has been filed. (A *fictitious name* is a trade name that people sometimes use in carrying on their business. For example, instead of using your real name “Tom Jones” to conduct your hardware store, you might use the fictitious name “Jones Hardware.”)

The county clerk’s office must maintain an alphabetical index of all filed certificates under the fictitious name. Once you have located the certificate under the fictitious name, you will be able to obtain the true name or names of the person or persons conducting the business, as well as the residence address of each person, since this information must be contained in the certificate.

If you still cannot locate the true name of the person or persons who are conducting a business, chances are such person(s) have either failed to file a certificate or you are dealing with a corporation which may be using a fictitious name. Corporations that conduct business under a fictitious name must also file a certificate, and face the same consequences if they fail to do so. However, you will only find the fictitious name of a corporation in the Office of the Secretary of State since this is the place where corporations are required by law to file such certificates. For the Secretary of State, you can call 518-474-0050 or write to:

New York State Department of State  
41 State Street  
Albany, New York 12231

## WHERE TO FILE YOUR SUIT

You, as a plaintiff, must sue in the small claims part of a court that is convenient for the defendant. In other words, if the person you want to sue does not live or have an office for business or is not employed near the court that you want to use to file a claim, you will not be able to

use that court to sue the defendant. This is a major difference between suing a defendant in small claims court as opposed to the regular part of the court, where you could force a defendant who lives out of the state to defend your suit.

NEW YORK CITY  
CIVIL COURT

If you want to sue in the New York City Civil Court, the defendant must either live in, or have an office for his or her business in, or be employed in the city of New York. This court functions only in the city of New York.

Each county in New York outside New York City is divided into towns. Within these towns are often villages. Most of these towns and villages have courts. A town court is sometimes referred to as the *justice of the peace*, and a village court is sometimes known as the *village police justice*. To make things even more complex, town and village courts are often collectively referred to as *justice courts*. Justice courts are the only courts in New York whose judges need not be lawyers and most are not lawyers.

TOWN AND  
VILLAGE COURTS

If you want to sue in a justice court of your village or town, the defendant must either live in, have an office for his or her business in, or be employed within that town or village where the justice court is located.

**Example:** Plaintiff Alicia brought an action against defendant Joe in the Justice Court, Small Claims Part, Town of Colonie, Albany County alleging that Joe had caused property damage to Alicia's yard when he backed his truck onto it late one Friday night. At the time Alicia filed her claim, Joe was living with his mother in the Town of Colonie and he had in fact been living with his mother for the previous 2 months while he worked on a short term construction project for his father. However, Joe continued to maintain his apartment in Yonkers, New York, which he considered to be his true residence. The court dismissed Alicia's small claim action against Joe for lack of jurisdiction. The court found that Joe had not relinquished his prior residence in Yonkers and thus could not be considered a resident of the town of Colonie.

There is a *city court* in each of the 61 cities outside New York City. If you want to sue in a city court, the defendant must either reside in, have



an office for his or her business in, or be employed within the county where the city court is located.

Sometimes this can result in seeming unfair ways where out-of-county landlords may sue their resident tenants in the small claims part, but a resident tenant cannot sue his or her out-of-county landlord.

**Example:** Alison's landlord refused to return her security deposit after she had vacated her apartment according to the terms of her lease. Alison sued her landlord in the small claims part of city court in Albany, New York for \$450, the amount of her security deposit. Alison's landlord lived in California and handled his dealings with his tenants in New York through a rental agent. Alison's small claim suit was dismissed on the basis that the court had no jurisdiction over the suit since the landlord neither resided, was employed, nor maintained an office for business in Albany county.

**NOTE:** *Had the parties been reversed, Alison's landlord would have been able to sue Alison in the small claims part of the city court since Alison resides in Albany county. (Alison resides in her apartment in Albany, which is within Albany county, where the Albany city court is located).*

#### CITY COURTS

If the judge in your case wants to dismiss your case in city court on the basis that your action cannot be brought in the small claims part of the court, you may want to ask the judge to transfer your case to the proper part of the court.

**Example:** Stephen brought a small claims action in the city court of Geneva, NY. Stephen's action alleged that his property sustained damage as the result of roof material flying off of an adjacent building owned by Marco. Marco's attorney moved to dismiss the action on the basis that Marco is an out-of-state resident and does not have an office in Geneva or Ontario county (the county in which Geneva is located), nor is Marco employed in the county. The court agreed that it lacked jurisdiction over Marco, but refused to dismiss the case and instead transferred the case to the civil part of the same court, which did have jurisdiction under the facts of this case.

There are two *district courts* in New York. One of these covers Nassau County. The other district court covers the Western part of Suffolk County. If you want to sue a defendant in a district court, the defendant must either reside in, have an office of the transaction of business in, or be regularly employed with a district of the court in the county.

## FINDING A COURT

### DISTRICT COURT

Perhaps the easiest way to find the small claims court where you can file your claim is to start with your telephone blue pages. Look for courts under the name of your city or town. If you do not find a listing specifically for small claims, you can call any general reference number of a court in your location and usually obtain the number for the small claims court of your locality. Once you have obtained the number and location of your small claims court, you should make sure that the defendant you want to sue meets the above requirements, or else you will need to choose a small claims court that is closer to the defendant. As always, the clerk of your small claims court will be helpful in deciding whether the defendant can be sued in the court you have chosen.

## FEES

At the time this new edition was published, the filing fee in the small claims part was \$10 for all small claims under \$1,000 and \$15 for all small claims over the amount of \$1,000. If you are bringing a commercial claim as a corporation, partnership or association, the filing fee is \$22.84. Personal checks are not usually accepted.

If you are suing for wages that do not exceed \$300, which an employer refuses to pay after you have made either a written or verbal demand for these wages, you should not have to pay any filing fee. To take advantage of this rule you will have to submit an *affidavit* to the clerk stating that:

- your claim does not exceed \$300;
- you have a good and meritorious cause of action against your employer for the wages owed;
- you are an employee or resident in the county you are bringing your claim (or the city of New York if you are suing in the civil court of New York city); and,
- you have made either a written or verbal demand upon the employer for payment of your wages and this payment was refused.

## BEGINNING YOUR CASE

### INDIVIDUALS

If you are filing in your own name as an individual, you or someone on your behalf should go to the appropriate court to pay the required filing fee to start your case. You will be required to fill out an application for your claim and must provide your name and address, the name and address of the defendant's place of residence, business, or employment to do this. You or the person filing the claim on your behalf must then sign the application and will then be provided with the date and time for the small claims hearing. An **APPLICATION TO FILE CLAIM** is provided in Appendix C of this book. (see form 1, p.107.)

Be sure to obtain a pamphlet, which your court should have, called *A Guide For the Use of the Small Claims Part*. It will contain a lot of valuable information on how to file a small claims court action.

### CORPORATIONS, PARTNERSHIPS, OR ASSOCIATIONS

If you are bringing a commercial claim on behalf of a corporation, partnership, or association, you must also go to the appropriate commercial part of your court to pay the required filing fee and fill out an application. The commercial part will most likely be located in the same place as the small claims part of the court, and the application will usually be on the same page as a small claims action. For an example of the type of application used, refer to **APPLICATION TO FILE CLAIM**. (see form 1, p.107.)

The application will contain a certification that no more than five commercial actions have been filed during the month you are bringing suit. Moreover, if your commercial claim is based on a *consumer transaction* (the subject matter over which you are suing was used primarily for personal, family or household purposes), you will also be required to sign a *verification* that you have mailed a *demand letter* to the defendant, between ten and 180 days prior to the time that you file your claim. Therefore, if your claim involves such a consumer transaction, you will have to send this demand letter prior to starting your case.

Your demand letter must contain the following information:

- the date of the consumer transaction that forms the basis for your suit;
- the amount that remains unpaid;
- a copy of the original debt instrument or other documents underlying the debt;
- any accounting of any payments made, and if you were not a party to the original transaction;
- the names and addresses of the parties to the original transaction;
- a statement that you intend to use the commercial claims part to obtain a judgment;
- that further notice of a hearing will be sent, unless payment is received by a specified date; and,
- that the defendant is entitled to appear at the hearing and present any defenses to the claim.

You can obtain a form for your **DEMAND LETTER** from the court or you may use the form in Appendix C. (see form 2, p.109.)

Be sure to ask for a pamphlet, called *A Guide For the Use of the Commercial Claims Part*, which you can obtain from your court. It contains a lot of useful information on how to use the commercial claims part of your court.

## POSSIBLE CLAIMS (LAWSUITS) AND WHAT YOU MUST PROVE

While the facts of your *claim* (lawsuit) will inevitably be unique in that it will involve specific events concerning you, the judge who presides over your case will be looking to see that your case fits under a category of cases for which the law can grant you relief. Moreover, even if your case fits under this category, in order to recover, the judge will require that you prove all of the necessary elements that must be proved for your type of case.

While you are not a lawyer, and no one at your hearing will expect you to know what the law is regarding your case, you will be more effective in presenting—and hopefully winning—your case if you have a good idea of what type of case you are bringing and what you must prove in order to win that particular kind of case. (Remember, you will have only a limited amount of time to present your case to the judge.) Knowing whether you can make out all the necessary elements to win your case will also better enable you to determine whether you should consider any settlement offers by a defendant and whether you should even pursue a claim in the first place.

The following is an explanation of the types of suits that are usually brought before small claims court, and the necessary elements you must prove in order to prevail at your hearing. Occasionally, your lawsuit will seem to apply to more than one of the following claims. In such an instance, you should present both claims to the judge rather than mistakenly exclude a different possible claim, to be sure you have covered all possibilities.

ACCOUNT  
STATED      Account stated is an action to recover money owed on an account in which the parties agreed to a balance but the customer never paid. To win an account case, you must prove:

- the parties had previous dealings that were always paid or quickly questioned;
- a statement for the claimed amount was rendered;
- the defendant did not object to the statement which raised a presumption of assent; and,
- the defendant never paid.

The advantage to this claim over a suit for payment for the goods themselves is that with this claim the other side cannot bring up the quality of the goods as a defense.

It may seem unfair, but by not objecting to an incorrect bill, a person agrees to pay it, and may be legally bound to pay it even if it is wrong. For customers, this means it is important to always question incorrect bills immediately; for businesses, it means it is important to send out regular statements.

Note that all four elements must be present to win this action. If the defendant disproves one of the elements you will lose.

#### OPEN ACCOUNT

Open account claim is an action to recover money owed on an open account, such as when a customer receives goods or services and is rendered a monthly bill. This is easier to collect than to sue for the value of the goods or services, because if a person gets several regular bills and does not object to them, they cannot contest the value of the goods or services later. To win a suit on an open account you must prove:

- the defendant had a charge account;
- a statement was rendered;
- the amount of the balance; and,
- it was never paid.

If you are not sure you can prove all the elements for an open account claim, you might want to file a claim using three different alternate claims, in the expectation that at least one of them will be successful.

GOODS OR  
SERVICES SOLD

Goods or services sold claim is an action to recover money owed for goods or services sold. To win a suit for goods or services sold, you must be able to identify the goods or services and prove:

- the defendant purchased them;
- a price was agreed to; and,
- the goods or services were never paid for.

If no price was agreed to, then you must prove the reasonable value of the goods or services.

GOODS OR  
SERVICES SOLD/  
ACCOUNT STATED/  
OPEN ACCOUNT

If you are not sure whether you have the evidence to prove any one of the previous three claims, then you should consider filing a three-count claim. In this claim you alternately claim each of the three grounds for collection. If your evidence is insufficient for one, you still have a chance to prevail under another. Of course, you cannot collect triple the amount of the debt.

IMPROPER  
SERVICES

Improper services claim is an action to recover money that was paid for services that were not performed properly. To win a suit for improper services, unless it is obvious that the service was improper, you must provide an expert witness who can testify the services actually were improper. The expert must be someone trained in the field of those services and examined the matter in the suit. For example, if a new roof leaked shortly after it was installed, it would probably be obvious that it was improperly done. But if you feel your car was not working properly after it was serviced, you would need another mechanic to testify that the repairs were done incorrectly.

PROMISSORY  
NOTE

This is an action to recover money owed on a promissory note that has not been paid on maturity. To win a suit on a note, you must prove:

- the defendant executed the note;
- it is past due;
- demand for payment was made; and,
- it was not paid.

UNPAID RENT Unpaid rent claim is an action to recover rent from a tenant. To collect unpaid rent you must prove:

- there was a written or oral agreement to pay a sum of rent and
- the defendant breached the agreement by failing to pay.

FRAUD This is not an eviction action. It is only for collection of money and is usually used to collect unpaid rent after the tenant has left. To evict a tenant you must begin a *summary proceeding*. A summary proceeding may be commenced in a County Court, the Court of a Police Justice of a village, a Justice Court, a court of civil jurisdiction in a city, or a District Court.

In order to prove *fraud*, you must prove the following:

- the defendant must have made a representation of fact;
- which is either untrue and known to be untrue or recklessly made by the defendant;
- which is offered to deceive you and induce you to act upon such representation; and,
- and which causes you injury.

**Example:** Tony responded to an advertisement in his local city's newspaper for the lease for a one-bedroom apartment in a brownstone building. After calling the listed number, Tony spoke to Annette, who said the apartment was still available and that it would cost Tony \$100 to use her referral service and see the apartment. Tony quickly went to Annette's office, signed a contract and paid the referral fee. Instead of the advertised one-bedroom, Annette showed Tony a cramped studio space. Tony demanded she return his referral fee, but Annette said that as an office policy, fees were not refunded. As a new customer walked into Annette's office, Tony told the customer that he had just been cheated. Immediately and without warning, Annette's bouncer, Elias, grabbed Tony and threw him outside into the hallway.



Under these circumstances, Tony should bring a cause of action for assault and battery (see above). Tony can also include a cause of action for fraud and a return of his \$100, since Annette had made a representation of fact (that a one bedroom apartment was available) which she knew was untrue in order to get Tony to sign the contract.

DAMAGE TO  
PREMISES

This is an action by a landlord to recover money for damage to rental premises and may include a claim for unpaid rent. To collect for damages to premises, you must prove that the damages were done by the tenant or during the tenant's term of occupancy. This means you must have witnesses who saw the premises before and after the tenant took possession. Photographs are very useful to a judge in such a case. Normal wear and tear is not considered damages, so if you have to repaint the property or clean the carpeting after a tenant has lived there for several years, those would be normal expenses of being a landlord and not the tenant's liability.

Like the claim for unpaid rent, this is not an eviction action. See the explanation under "Unpaid Rent" on page 25.

SECURITY  
DEPOSIT

This is an action by a tenant to recover a security deposit that was kept by a landlord. Upon the expiration of your lease, you have a cause of action for the return of your security deposit that has been wrongfully withheld by your landlord. As you have given money to your landlord as security for the faithful performance of all your obligations under the lease, you are entitled to the return of the deposited money. Unless the landlord can show that he or she has been damaged by a breach of some promise that you made in the lease.

BAD CHECK

This is an action to collect on a check that was worthless because of insufficient funds or any other reason. After you have received a worthless check, you should present it to a bank and have them mark the reason it was not paid. Then you should send a Bad Check Notice by certified mail, return receipt requested, to the person who wrote the check.

	<p>You should be aware that it is a <i>misdemeanor</i> for any person to issue a bad check knowing that he or she does not have sufficient funds in the bank to cover a check. A misdemeanor is a criminal offense that is used to describe crimes where the possible penalty does not exceed 1 year in prison.</p>
BREACH OF CONTRACT	<p>This is an action to recover money damages for failure of a party to abide by the terms of an oral or written contract. To win a suit for breach of contract you must prove:</p> <ul style="list-style-type: none"><li>● there was a written or oral agreement between the parties;</li><li>● the defendant did not perform or performed improperly; and,</li><li>● you performed or were ready, willing, and able to perform your part of the agreement.</li></ul>
AUTO ACCIDENT	<p>This is an action to recover money for damages sustained in an automobile accident. To win a claim for damages from an automobile accident, you must be able to prove:</p> <ul style="list-style-type: none"><li>● the defendant caused some damage and</li><li>● it was done negligently (or intentionally).</li></ul>
NEGLIGENCE	<p>To prove negligence you can use a guilty plea as evidence, but you cannot use a conviction of a traffic violation. (Some people plead <i>nolo contendere</i>, which is not a guilty plea, but can be used against them). However, you can use the same witnesses as in the traffic case, and if you can prove the other party violated a traffic law, that would usually be proof of negligence.</p>
ASSAULT AND BATTERY	<p>An <i>assault</i> is an attempt, displayed by violence or threatening gesture, to injure or commit a battery on another person. A <i>battery</i> is the actual wrongful physical contact to a person without the consent of the victim. In addition to compensatory damages, such as any medical bills or loss of earnings which occurs as a result of an assault and battery, you may be awarded <i>punitive damages</i> to punish the defendant. Although there are defenses to an assault and battery, such as <i>self-defense</i>, no provocative act or word, if unaccompanied by an overt act of hostility, will justify an assault or battery no matter how offensive it may be.</p>

Provocative remarks, however, may be considered in the lessening of damages in a case.

BREACH OF  
EXPRESS  
WARRANTY

This is a claim for damages when a product or service does not live up to an expressly-worded warranty. To win such a case, a person must prove:

- a warranty was given (written or oral);
- the product or service breached the warranty; and,
- some damages resulted from the breach.

BREACH OF  
IMPLIED  
WARRANTY

One good catch-all claim is *implied warranty*. This is a claim used when a product or service does not fulfill its basic purpose. The three types of implied warranties are as follows:

***Warranty of Title.*** If you were sold an item that the seller did not own and that you had to return to the rightful owner (such as stolen property), you could sue the seller for breach of the implied warranty that he had title to the property he sold you. To do so you must prove that:

- you paid for the item and
- you did not obtain title to it.

***Warranty of Merchantability.*** When goods are sold by a dealer of such merchandise, unless they are sold “as is,” there is an implied warranty that they are fit for the purpose for which they are made. If a washing machine does not wash, it is not merchantable. If bread is moldy, it is not merchantable. To win a claim for breach of the warranty of merchantability, you must prove that the goods were not merchantable when received. If, for example, a car broke down two weeks after it was purchased, you could not collect for breach of such a warranty unless you could prove that at the time of the sale the car was in such a condition as to make it unmerchantable. If a part was ready to break, you would probably win. If it broke because you hit a bad bump in the road, you would probably lose.

***Warranty of Fitness for a Particular Purpose.*** When a seller represents himself as being knowledgeable about a product and sells it to a person

for a known particular purpose, there is an implied warranty of fitness for that purpose. For example, if a body building gym sells a piece of pipe for use as a weight lifting bar and it bends, there would be a breach of a warranty, even if it was a perfectly good pipe for other purposes. To win a suit for an implied warranty, you need to prove that the seller was knowledgeable about both the product and your reason for needing it, and that the product was not proper for your purpose.

FAILURE TO  
DELIVER  
FURNITURE OR  
APPLIANCES

If you have purchased furniture or a major household appliance (such as an air conditioner, dryer, stereo, etc.), your dealer is required by law to print an estimated range of delivery dates conspicuously on your purchase contract. Your dealer must also make delivery by the latest date stated on that contract. If your dealer fails to do this you have the option of doing any one of the following:

- canceling the contract and receiving a full refund of your money. The dealer has 2 weeks to provide you this refund after you demand it;
- negotiating with your dealer for a new range of delivery dates; or,
- modifying your contract by making a new selection of furniture or major household appliance.

If your dealer does not follow through on one of the options above, you have the right to recover in small claims not only for a refund of the money you have paid but also 3 times your actual damages if the court finds that your dealer's actions were intentional. Moreover, the court may also award you reasonable attorney fees if you prevail. (See New York General Business Law, Section 396-7 for more information.)

We have probably all wanted to tell a merchant "you know, you can't just advertise that you have something when you really don't!" You may have wondered if there really is a law against false advertising in New York. The General Business Law Section 350 provides that false advertising in the conduct of any business, trade or commerce, or in the furnishing of any service is unlawful.

FALSE  
ADVERTISING

The term *false advertising* means advertising, including labeling which is misleading, in a material respect. The law also does not apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints the advertisement.

To establish a claim for false advertising you must provide:

- that the advertisement was misleading in a material respect and
- that you were injured (defined here as being misled or deceived by the advertisement).

If you prove false advertising, you are entitled to recover your actual damages or \$50, whichever is greater. The court may also increase your award of damages to three times the amount of your actual damages up to \$1,000 if it finds that the defendant willfully or knowingly violated this law.

**Example:** Defendant (D) advertised in the local paper china dishes at 60% off the regular listed price of \$280, Plaintiff (P) attempted to purchase the dishes at the advertised price, but P refused to sell the dishes at that price. P immediately commenced a small claims action against D seeking \$280. P was awarded only the nominal amount of \$50. P should have purchased the dishes at the higher price and sought the difference if P really wanted to recoup her actual damages. As the case stood, P had no actual damages because she had not incurred any out of the pocket loss due to the defendant's breach.

LEMON LAW

New York has two *lemon laws*, which you should consult if you are the purchaser of an automobile. The new car lemon law is found at General Business Law, Section 198-a and the used car lemon law is found at General Business Law, Section 198B. Unfortunately, these statutes are quite lengthy and complex. But you should consult them directly because they contain important information about what you must do in

order to preserve your rights under these statutes. If you see that your dealer has violated a provision of the statute, then you should point this out to your dealer.

With the expense of new automobiles reaching prices of over \$20,000, you most likely will not bring an action in small claims court for the return of your purchase price. Remember that the maximum amount of money a small claims court can hear is \$3,000. Also, you can only sue for money damages in a small claims court whereas the remedy you may really seek is simply a replacement by the dealer of your defective automobile. In such cases, you will be required to hire an attorney and bring your case in the regular part of a court.

DEFECTIVE  
USED CARS

If you have bought a used car which was defective at the time that you bought it, another law that you should consult is Section 417 of the Vehicle and Traffic Law. Section 417 gives a buyer a warranty of serviceability that a used car as delivered is in condition and repair to render, under normal use, satisfactory and adequate service upon the highway. You can use this law if you can prove that you purchased a used car that was defective at the time that it was delivered to you.

DECEPTIVE  
BUSINESS  
PRACTICES

New York State General Business Law, Section 349 prohibits deceptive business practices. This is a broad statute and is designed to giving consumers a powerful remedy to right commercial wrongs. The elements that you must prove are:

- the practice you are complaining about was deceptive or misleading in a material respect and
- proof that you were injured:

**Example:** Plaintiff Alicia wanted to take a beginner's computer course and enrolled in a computer course that was described as being appropriate for students with no prior math or computer skills. Although concerned that the course would be too difficult for Alicia, given her rudimentary math skills, her adviser at the University assured her that she would be fine in the course.

During the third class meeting, the instructor assigned several problems that clearly required a mathematical background. Alicia could not figure out any of the assigned problems, and after the 8th class meeting, withdrew from the course and asked for a return of her tuition. After the University refused a return of tuition, Alicia brought a small claims action alleging, among a host of causes of action, that the University had violated the statute against deceptive business practices. The court agreed, and entered judgment for the full amount of Alicia's tuition deposit.

WAGES OWED  
BY EMPLOYER

This is an action that you bring against your employer for wages that you have earned, but your employer refuses to pay you. If the court finds that your employer's refusal to pay was willful, the court must award you an additional amount of money which is equal to 25% of the total wages the court finds due to you. Moreover, if you prevail, you are entitled to reasonable attorney fees. (See the New York Labor Law Section 198(1-a) for more information.)

## POSSIBLE DEFENSES

Before you file a case, you should consider whether the defendant has any valid defenses or a counterclaim against you. You should review Chapter 4 of this book to see if your claim could be barred by a legal rule. Consider any claims a defendant may be able to make against you. Occasionally, a person filing a small claim ends up losing a lot more than he or she was suing for.

## DISCLOSURE

*Disclosure* is the term used when one party (the *moving party*) asks the court to compel the opposing party to make available the information that the moving party needs to prepare for the case.

**Example:** If you are suing the defendant for negligence in performing some type of service for you, it might be helpful to know the particular training background of the defendant before you go into the courtroom.

In a regular lawsuit there are extensive procedures you can use to compel the defendant to make such information available to you. However, these devices are not normally permitted in a small claims action, unless you can demonstrate some special or compelling need for the information. In other words, prior to trial, you can only ask the court to compel a defendant to disclose information that is absolutely necessary to the presentation of your case at the hearing.

In most cases, there will not be a compelling need for you to obtain disclosure of information prior to the hearing. However, if you feel that the defendant has some type of information that is absolutely necessary to the presentation of your case, you should consult the clerk of the court about bringing a motion to the court in order to decide whether you have the right to compel the defendant to provide you with this information prior to your hearing.

## HOW MUCH YOU SHOULD ASK FOR

When you fill out your small claims complaint form, one question on the form will ask you to state how much money you are seeking. First and foremost, you should always ask for the *actual damages* that you have suffered. These are damages that you have directly incurred due to the defendant's conduct.

**Example:** If the defendant refuses to return your \$500 security deposit, what you have actually suffered is \$500 and that is what should be stated.



You should also ask for any *special damages* that you may be entitled to, given your particular cause of action (review the types of actions that you may bring above).

**Example:** A particular statute may say that you are entitled to more than your actual damages if you are the prevailing party. If this is the case, you should ask for that amount, even at this early stage of your case, in order to alert the judge that you are pursuing these additional damages.

You may be entitled to *punitive damages* if the defendant has acted intentionally or particularly egregiously. These damages are assessed by a court in order to punish the defendant from repeating his or her conduct in the future.

**Example:** Such damages may be appropriate in the case of an assault and battery.

Normally, punitive damages will not be awarded. They are inappropriate when the defendant's conduct was simply careless or negligent. Punitive damages also cannot be assessed against a municipality or any of its bureaus.

You should also ask for *interest*, from the earliest date the defendant's conduct occurred, on any judgment you obtain. (See New York Civil Practice Law Rule, Section 5001(B) for more information on interest.)

## JURY TRIAL

You, as a *plaintiff* (claimant), do not have the right to a jury trial in small claims court. By bringing an action in the small claims part, you are deemed to have waived your right to ask for a jury trial. You only have the right to demand a jury trial after starting a small claims action if your case is removed from the small claims part to a regular part of the court. In that instance, the procedures of the regular court would apply and you would have the right to ask for a jury trial.

# DEFENDING YOURSELF 4

If you are sued in small claims court, you should read all of the documents carefully to find out where you are to appear in court and what exactly you are being sued for. You should also read through this chapter because it deals with the types of defenses that might apply to your particular situation. If a particular defense applies to you, you should argue this defense when the time comes for you to appear in court.

If you know the claim is true, you should contact the other party and try to settle the matter. You should not waste the court's time and incur additional expenses if you know you owe the money for which you are being sued. If you do not have the money, you can offer to sign a promissory note to make regular payments, or you can sign a *stipulation* in the court case to make payments.

## NOTICE OF CLAIM

**DO NOT IGNORE A NOTICE OF CLAIM!** If you have received a notice of a plaintiff's claim against you informing you of the date and time for a hearing of the case, you may feel for whatever reason that you should simply ignore the date set for your hearing. This is a huge mistake since if you do not show up to your hearing, the plaintiff will in all likelihood be granted a judgment of *default* against you. Once the plain-

tiff has obtained his or her judgment of default, the plaintiff has a whole array of methods of going after any of your assets to satisfy this judgment.

There have been cases in which wealthy individuals have ignored suits that they thought were ridiculous, resulting in the loss of great amounts of property when the court seized their buildings to pay off judgments as small as \$100. If you cannot attend the hearing, call the court and ask for an *adjournment*.

## YOUR DEFENSES

Before you decide to settle the case you should review your defenses in the matter and see if the claim is legally enforceable. There are many possible defenses to a claim that you (and the plaintiff) may not know about.

Read all of the following possible defenses and see if any of them apply to your case. If you think you have a defense, be sure to mention it to the judge if your case goes to court. Some of the defenses may just delay the case, and if you are in a hurry to get it over with you might not want to use them, even if they do apply. But many of them are defenses that could win the case for you.

### IMPROPER NOTICE

The clerk of the court will handle sending you notice of the plaintiff's claim. Notice must be sent by ordinary first class mail and return receipt requested. However, just because the clerk has this duty does not mean that notice does not have to be given to you exactly as the law requires. If you have not been given notice precisely as required under the law, you can raise this fact as a defense to the court's jurisdiction over you.

Under New York law, you must be given notice of the plaintiff's small claim action by ordinary first class mail and by certified mail, return receipt requested. This notice must be sent to your residence. However, if your residence is unknown or you do not reside within the county of the court (if the plaintiff is using a city or justice court) or the city of New York (if the plaintiff is using New York City Civil Court) or within the appropriate district (if the plaintiff is using a district court), then

such notice can be given at your office or place of regular employment within the town or village (if the plaintiff is using a justice court) or within the county of the city court (if the plaintiff is using a city court) or within the city of New York (if the plaintiff is using the New York City Civil Court) or within the appropriate district (if the plaintiff is using a district court).

If, after the expiration of twenty-one days (thirty days for a commercial claim in a city court), the first class mailing has not been returned as undeliverable, you will be presumed to have received notice of the plaintiff's claim. The notice that you will receive must be in substantially the same form as the NOTICE OF CLAIM in Appendix C of this book. (see form 3, p.111.)

**Example:** Megan and her sister, Kate, both owned a house that they rented at 2 Park Place in Buffalo, New York. Megan lived out of state while Kate lived in Buffalo at 21 Beaver Street. A visitor of one of their tenants sued Megan and Kate in the small claims part of Buffalo city court after he was injured by tripping while walking through a corridor to the apartments.

The clerk of the court sent out two separate notices to 21 Beaver Street, one naming Megan as a defendant, and the other naming Kate as a defendant. While the notice addressed to Kate was valid, because Kate resided at 21 Beaver Street, the notice addressed to Megan was not, because Megan neither resided, nor maintained an office, nor was employed at 21 Beaver Street. Megan could properly seek dismissal of the small claims action with respect to herself.

#### JURISDICTION

If you are not being sued in the proper court, then the court does not have *jurisdiction* to hear the plaintiff's case. See the section in Chapter 3 on "Where to File Your Suit" to make sure that the plaintiff can sue you in the small claims court that the plaintiff has chosen. If the plaintiff is not suing you in a court that has jurisdiction over you, then you should seek dismissal of your case on this ground.

**DENIAL** First read the statement of claim and all exhibits carefully to see if everything is true. Look at your records and compare the dates and other details. Perhaps the claim is untrue. If an important aspect of the claim is untrue, you may win the case.

**FOREIGN CORPORATIONS** You may run into a *foreign corporation* that is simply a corporation formed under the laws of another state. Foreign corporations that conduct regular business in New York are required to obtain authorization to do business from the Secretary of State. If your plaintiff is such a corporation, then you should check with the Secretary of State to determine if the corporation has obtained authorization to do business in New York. You can call the Secretary of State in Albany at 518-474-0050 to check on the corporation's status. You can also write to the Secretary of State and make up to five free inquiries regarding the status of any corporation (there is a \$5 fee for each additional inquiry) at the following address:

New York State Department of State  
Divisions of Corporations  
41 State Street, 2nd Floor  
Albany, New York 12231

If your foreign corporation does not have authorization to conduct business in New York, it cannot maintain an action against you, and you should ask that any lawsuit by the corporation be dismissed on this basis.

**FICTITIOUS NAMES** Any person who conducts a business in New York under any name or designation other than his or her real name, must file a certificate in the office of the clerk of each county in which the business is conducted, or in the case of corporations conducting business under a fictitious name, with the Secretary of State. Any person who fails to do this is prohibited from maintaining any action or proceeding in any court on any contract, account, or transaction made in a name other than its real name until the required certificate has been filed. So, if your plaintiff conducts business under a fictitious name, you should check to see that the necessary certificate has been filed. If the certificate is not on file, then you should ask that the plaintiff's case be dismissed on this ground.

RES JUDICATA

*Res Judicata* is an old legal rule meaning that the case has already been decided. There can only be one case on each single controversy. If a court already considered a matter, a new court cannot reopen it.

**Example:** If you sued a tenant for an eviction under a lease, he cannot bring a new case later claiming you violated the lease. He should have brought up the matter as a counterclaim in the original suit.

If you believe that the plaintiff has previously brought the same action against you, whether it be in small claims court or any other proceeding, you should claim the defense of *res judicata*.

**Example:** Alicia brought a small claims action against her landlord in order to recover damages sustained to her possessions as a result of a water leak. Alicia lost this action. One year later she brought the same action against her landlord. At the request of the landlord, the court properly dismissed Alicia's second case on the basis of *res judicata*.

LACK OF  
CONSIDERATION

Promises to make gifts are not enforceable. Therefore, if you signed a promise to pay someone and never received anything in return, the promise would be unenforceable. This can be used in many kinds of cases.

**Example 1:** If you promised to give your neighbors your old car when you got a new one, they could not win a suit for the car if you changed your mind, since they did not do anything for the car. However, if you told them you would give them your old car if they mowed your lawn every week, and they did so, then they could sue you and win.

**Example 2:** If you agreed to pay \$1000 for a diamond ring and signed a promissory note to the seller, then discovered the stone to be glass, you could probably avoid paying the note because you got nothing for it. (You could probably also use the fraud or the mutual mistake defenses.) However, if you borrowed the money from a third party such as a bank, you

probably could not avoid repaying the bank for the loan because the bank is not responsible for the condition of the item you bought.

Also, if you bought something and signed a promissory note and then the dealer sold the note to a bank or other lender, you probably could not avoid paying the note, since the bank would be considered an innocent buyer of the note and the law encourages these transactions. Many businesses that sell questionable products quickly sell the loan papers so that the buyers cannot stop payment. Sometimes the bank or other lender can lose the case if they are part of a conspiracy with the business, but this type of case would be difficult to prove.

STATUTE OF  
FRAUDS

Certain agreements are not enforceable if they are not in writing. Even if the facts are true and money is owed, the law says that these agreements just will not be enforced by the court if they are not written and signed. The writing need not be a formal contract. Canceled checks and short memoranda signed by one party have, in some cases, been held to be sufficient. The following are instances when the agreement must be in writing. For further research, the relevant statute citations from the General Obligations Law and Uniform Commercial Code Sections are included with each:

- sales or transfers of any interest in real estate (Gen Oblig Law, Sec. 5-703(1,2));
- leases for a period longer than one year (Gen Oblig Law, Sec. 5-703(2));
- guarantees of debts of another person (Gen Oblig Law, Sec. 5-701(a)(2));
- sales of goods over \$500 (UCC, Sec. 2-201);
- agreements which take longer than one year to complete (Gen Oblig Law, Sec. 5-701(a)(1));
- sales of securities (UCC Sec. 8-319);
- agreements made in consideration of marriage, except mutual promises to marry (Gen Oblig Law Sec. 5-701(a)(3));

- a subsequent or new promise to pay a debt discharged in bankruptcy (Gen Oblig Law Sec. 5-701(5));
- assignment of a life, death, or accident insurance policy or the promise to name a beneficiary of any such policy (Gen Oblig Law Sec. 5-701(9)); and,
- the promise of a *grantee* (a person to whom real estate is conveyed) to pay off a mortgage on the real estate which existed prior to the conveyance (Gen Oblig Law Sec. 5-705).

MINORS An agreement entered into by a minor is generally not enforceable in court. The exceptions to this are if the minor continues to fulfill the agreement after reaching majority or if the agreement was for a *necessity*. Necessities are items that are considered necessary to live and might include things like food or shelter. Thus, if a minor signed an agreement to buy a car it would probably not be enforceable, but if he signed a check to pay for food it probably would be.

PAYMENT If you have actually paid the money claimed to be owed, this would be a defense to the claim. Perhaps the money was credited to a wrong account or not credited at all. To prevail with this defense you should have some evidence that you have made payment, such as a cancelled check or a receipt.

ACCORD AND SATISFACTION If a debt is in dispute and the parties agree to a settlement, such as acceptance of fifty percent of the debt, this should finally settle the matter. If one party later claims the whole amount in a suit, the settlement agreement would be a defense. This agreement of *accord and satisfaction* should, of course, be in writing, but even if it is not, it may be enforceable.

PAYMENT AFTER SUIT IS FILED Once a suit is filed, the loser will usually have to pay the court costs in addition to the money owed. This usually consists of the filing fee and the sheriff's fee. If the amount owed is in dispute, the defendant can pay what he thinks he owes into the registry of the court, and if the judgment is not for a greater amount, he will not have to pay the court costs.



STATUTE OF  
LIMITATIONS

The laws of every state give time limits on how long claims can be brought. After a certain time, claims will not be allowed by the court, no matter how valid they are. Thus, if a person waits too long to file a suit, his or her claim may not be enforceable. These time limits on when an action must be commenced are called *statutes of limitations*. Usually the time limitations begin to run from the day that you committed the act that the plaintiff is complaining about. However, there are a few exceptions to this general rule.

The time period stops on the day the plaintiff pays the filing fee to commence the small claims action.

**Example:** If the day that you allegedly breached a contract was April 15, 1998 and the plaintiff files his or her small claims action on April 15, 2001, three years would have passed for purposes of the statute of limitations. If the plaintiff's action were to have a statute of limitations of less than three years (this would not actually be the case here, considering contract actions have a six year statute of limitation as will be seen below), then you could assert this 3 year statute of limitations as a complete bar to the plaintiff's action.

Listed below are various actions and their respective time limitations that each action must be commenced. Also listed is the statute section from the Civil Practice Procedure Law and Rules (Civ. Prac. Pro. Law), the General Obligation Law and the Uniform Commercial Code where you can find the particular limitation for further research.

The following actions must be commenced within twenty years:

- actions to collect on a money judgment (Civ. Prac. Pro. Law, Sec. 211(b)) and
- actions to enforce any temporary or permanent order or judgment which awards support, alimony, or maintenance (Civ. Prac. Pro. Law, Sec. 211(e)).

The following actions must be commenced within six years:

- actions based on a contract, except with respect to contracts for the sales of goods (Civ. Prac. Pro. Law, Sec. 213(2));
- actions upon a bond or a note secured by a mortgage upon real property or actions upon a mortgage of real property (Civ. Prac. Pro. Law, Sec. 213(4)); and,
- actions to recover wages owed by an employer (New York Labor Law, Section 198(3)).

The following action must be commenced within four years:

- contracts for the sale of goods (UCC Sec. 2-725)

The following actions must be commenced within three years:

- actions to recover damages for a personal injury, generally (Civ. Prac. Pro. Law, Sec. 214(5));
- actions to recover for malpractice, other than for medical, dental or podiatric malpractice (Civ. Prac. Pro. Law, Sec.214(6));
- actions to recover damages for injury to one's property, generally (Civ. Prac. Pro. Law, Sec. 214(4));
- actions based on fraud or mistake (Civ. Prac. Pro. Law, Sec. 213(6,8)); and,
- actions to recover a chattel or for damages due to the taking or detaining of a chattel. (Civ. Prac. Pro. Law, Sec. 214(3)).

The following action must be commenced within two years and six months:

- actions for medical, dental, or podiatric malpractice, except when the action is based upon the discovery of a foreign object in the body of the patient, in which case the time limitation is one year from the date of discovery or from the date of discovery of facts which would reasonably lead to such discovery whichever is earlier (Civ. Prac. Pro. Law, Sec. 214(a)).

The following action must be commenced within one year and ninety days:

- actions against municipalities such a city, county, town, or village (General Municipal Law, Sec. 50-I)

The following actions must be commenced within one year:

- actions upon an arbitration award (Civ. Prac. Pro. Law, Sec. 215(5)) and
- actions for libel or slander (Civ. Prac. Pro. Law, Sec. 215(3)).

After reading through the above types of actions and their respective time limitations, if the plaintiff's claim has not been commenced within a respective time period, raise this as a defense to the plaintiff's claim at your hearing.

FRAUD OR  
MISREPRESENTATION

If you were defrauded in a transaction, or if important facts were misrepresented to you, you may have a valid defense.

**Example:** If you bought a car and later found out the odometer was set back, you can use that as a defense if you are sued for the price of the car. Usually such claims should be used for a counterclaim. (See Chapter 6 for more information.)

MISTAKE OR  
ERROR

If both parties were mistaken about an agreement they entered into, it can usually be voided.

**Example:** If both parties believed a gem to be a diamond, but it turned out to be a fake, then a sale of it could be rescinded. If only the seller knew it was a fake, this defense would not work, but the fraud defense might.

BREACH OF  
CONTRACT

If the plaintiff did not fulfill his side of an agreement, he may not be able to sue you to collect on it. Thus, if improper goods were delivered, the seller should not be able to collect. Explain to the judge any ways that the plaintiff failed to fulfill his side of the agreement.

- USURY** If you were loaned money at an annual interest rate of over sixteen percent, there may have been a violation of the *usury* laws. If a bank charges interest in excess of the amount permitted by statute, you (individuals, not corporations) have a defense to the payment of the entire interest on the loan; however, you would still be required to pay back the principal of the loan. For more information on New York's Usury laws, see New York's Banking Law, Section 108 and General Obligations Law, beginning with Section 501.
- SALES OF GOODS** Sales of goods are governed by a set of laws called the Uniform Commercial Code (New York Statutes, Article 2). If you are being sued over a transaction involving a sale of goods, there might be a rule that covers your case.
- Example:** If you sold defective goods and the buyer did not give you proper notice that they were defective then he may not be able to win a suit against you.
- BANKRUPTCY** If a person files liquidation bankruptcy, the debts listed can be wiped out and completely discharged forever. If a person files a bankruptcy petition while a case is pending, all actions against the person and his property must stop. If you are the plaintiff and a defendant tells you that he has filed bankruptcy, you should call the local federal bankruptcy court to confirm that it has been filed. If you take any action after you have been informed of a bankruptcy you may be held in contempt of federal court.
- In a reorganization bankruptcy, the debts will not be wiped out but the court will approve a schedule for payment of them. Still, you may not take any actions against the debtor while he or she is in bankruptcy.

## SETTLING THE CASE

Whether or not you have any defenses to the case, it is usually better to negotiate a settlement than to take a chance with a judge's decision.

No matter how sure you are of your case, you can easily lose if your witness does not show up, or if the other side is more believable, or if any number of things go wrong.

It is often better to take only a partial victory than to risk complete defeat. If the plaintiff understands that he may never be able to collect his judgment, he might accept fifty cents or even twenty-five cents on the dollar for a cash settlement.

Even if you know you owe the full amount, you should try to avoid a judgment being issued against you. This will be damaging to your credit rating. The best arrangement for both sides is to enter into a *Stipulation to Stay Entry of Judgment*. This is an agreement in which the parties agree that if the defendant makes payments according to a certain schedule, no judgment will be entered. It is important for the defendant to keep payment by the schedule or else the judgment will be quickly filed. If the payments are made, no judgment will ever be filed.

Some counties have dispute settlement programs where parties can talk to a mediator and avoid the trouble of court. But such mediation is not binding, and a person who does not get his way may go to court anyway.

## ASKING FOR A JURY TRIAL

You, as a defendant, have the right to demand a jury trial as long as you make this demand prior to the date set for the hearing of your small claims case. In reality, however, very few small claims defendants demand a jury trial. The reasons are simple; you incur the added expense of a jury fee (\$55.00) and you must also provide the clerk of the court with an undertaking (\$50.00).

To demand a jury trial, you must complete a **DEMAND LETTER** for a jury trial, as well as an attached affidavit stating that your demand is made in good faith and specifying the issues of fact in the plaintiff's action which require a jury trial. **DEMAND FOR JURY TRIAL** and **AFFIDAVIT IN SUPPORT OF DEMAND FOR JURY TRIAL** forms are contained in Appendix C. (see form 4, p.113, and form 5, p.115.)

Issues of fact pertain to facts or events of the plaintiff's case that you and the plaintiff disagree on.

**Example:** If the plaintiff claims that you were negligent in repairing his or her car, an issue of fact might be whether your repair work was actually the cause of the damage the plaintiff is complaining about, or whether you were negligent in repairing the plaintiff's car. Since both of these issues are necessary for the plaintiff to prevail, these issues should be enough for you to obtain a jury trial if you want one.

To decide what to write on your **DEMAND FOR JURY TRIAL** as issues of fact, you should scan the types of actions that a plaintiff could bring in Chapter 3. Once you have found the type of lawsuit that the plaintiff is bringing against you, you should look for the elements that the plaintiff must prove to win the case. Any event or issue of fact relating to the proof of any of those elements should support your demand for a jury trial.

After completing your **DEMAND FOR JURY TRIAL** and **AFFIDAVIT IN SUPPORT**, you must file the forms with the clerk of the small claims court. After the clerk receives these forms and you pay all necessary fees, the clerk will transfer the small claims case to the part of the court used for jury trials.



# COUNTERSUING 5

The best defense is a good offense, so the best way to defend yourself is to find a reason to sue the plaintiff. If there is only a suit pending against you, the plaintiff will be eager to try the case because he can either win or not win. But if you file a suit against him or her, he or she may lose. When both parties have claims against each other, the cases are often dropped or settled quickly because neither party wants to take a chance of losing.

## HOW TO COUNTERSUE

You have the right to file a counterclaim against the plaintiff so long as your counterclaim is for money only and does not exceed the dollar amount allowed in small claims actions which was \$3,000 at the time this book was published.

You must file any counterclaim you have within five days after receiving notice of the plaintiff's claim. You do this by filing a statement containing your counterclaim with the clerk of the small claims court. You will also be required to pay an applicable filing fee of \$3 plus the cost of mailing your counterclaim to the plaintiff. After you have filed your counterclaim, the clerk will send notice of your counterclaim by ordinary first class mail to the plaintiff.



If you fail to file your counterclaim within the five days of your notice of plaintiff's claim, you do not lose your right to file a counterclaim, but the plaintiff (claimant) has the right to request and obtain an adjournment of your scheduled hearing to a later date. A judge will also have the right to adjourn your case if you wait until trial to bring up any counterclaims that you may have.

You should review the types of claims that a plaintiff may bring in Chapter 3 to see if you have any possible counterclaims against the plaintiff. If you want to sue the plaintiff for more than \$3,000 you must bring the suit as a separate action in a regular part of the court.

## EXCEEDING THE LIMIT

If you have a claim that is over \$3,000, it cannot be heard in small claims court. You will be required to file your claim in a regular part of the court as a separate action which will normally entail the expense of hiring a lawyer, due to the much stricter rules of procedure that must be followed.

If your claim is for over \$3,000, but you would not mind limiting your judgment to \$3,000, you can continue the action in small claims court.

## IMPLEADING ADDITIONAL DEFENDANTS

If, after a claim is filed with the clerk, you desire to *implead* (sue) one or more additional defendants, the clerk will issue and mail, upon receipt of the proper fees, a NOTICE OF CLAIM to each additional defendant you want to add. Notice will be given in the same manner as with the original defendant. (see form 3, p.111.)

The right to implead additional defendants is a right shared by both the plaintiff and the defendant.

**Example:** If you are being sued in a matter and there is someone else involved who has some or all of the responsibility, then you should implead them.

# YOUR TRIAL (HEARING) 6

If you have read through all of the prior chapters in your book, this part of your case should actually be the easier part of your case. The hardest part is usually the preparation. However, I am sure that this is will be the most nerve racking for you since it is the day that you go before your judge to present your case. In that light, just be calm and remember what you need to prove in order to win your case.

This chapter will take you through what you can expect at your hearing as well as some additional pointers that you should remember. An obvious pointer but one that a remarkable number of people fail to adhere to is the following: Show up at your scheduled hearing on time! A defendant who fails to appear at the hearing on the day and time fixed will be held in default, although no default can be ordered if the defendant or his attorney appears within one hour after the time fixed for the hearing.(see Chapter 9 for details on default.)

## ARBITRATION

There is a good possibility that both parties to a small claims court action will be asked whether they want to submit their case to be heard by an arbitrator rather than a judge of the small claims court. You may even be asked this question after you show up to your scheduled trial.

Arbitration is looked upon favorably by the court, since it is a means for the court to quickly move cases.

When you agree to arbitration, you normally agree to be bound by the arbitrator's decision regardless of the outcome. Thus, on the possible negative side of agreeing to arbitration, you should realize that you give up your right to make any appeal of the decision. However, given the limited nature of such a right, this may not sound as important as it seems. The important thing for you to remember is that you are not required to agree to arbitration, and your rejection of arbitration should not have the slightest effect on how the judge of the small claims court decides your case. However, you may be asked to come back to the court at a later date for your trial if you do not agree to arbitration.

If you agree to arbitration, your arbitrator will be an attorney appointed by the court and will have all the necessary qualifications to decide your case according to the law. In some cases, your arbitrator could even be a judge on the bench or even a retired judge with considerable court decision experience. Each witness who testifies before the arbitrator will be sworn in just like a trial before a small claims judge, and the hearing procedure will be similar, if not exactly like it would be, if you were appearing before a small claims judge.

The arbitrator will make his or her award in writing and file this with the clerk of the small claims part. Unless both parties file a request not to enter judgment, the clerk will enter judgment in accordance with the arbitrator's award within two days of this filing.

## SETTLING BEFORE TRIAL

Most lawyers will agree it is much better to settle a case and get most of what you want than to hold out for everything and have a trial. Even the most iron-clad cases have been lost at trial. There are many reasons for this. The judge may not believe you, your witness may get the facts mixed up, the judge may feel sorry for the other side, or there may be a little known legal rule precluding your recovery.

If you can come out ahead by settling for part of what you want, you should consider that option. If a tenant offers you \$100 in back rent, but you feel he owes \$400, you might be better off with \$100 in cash than with a \$400 judgment you may never collect. Weigh the chances of winning and the chances of actually collecting (and the time involved) with the amount the defendant is willing to settle for and decide if it is worth it.

## JURY TRIAL

As stated previously, a plaintiff is deemed to have waived the right to a jury trial by bringing an action in small claims court. However, any other party to the action may demand a jury trial. (See Chapter 4, “Should You Ask for a Jury Trial” for an explanation of a party’s right, such as the defendant, to ask for a jury trial.)

## TRIAL

If you have not settled the case and if the defendant has not *defaulted* (failed to show up), then a trial will be held. The purpose of the trial is for the judge or jury to hear both sides of the case and decide who should win and what money, if any, is owed.

The trial is your only chance to present your case to the court. You cannot tell the judge that you are not ready or you forgot some of the evidence, unless you have some sort of real emergency. If there is an emergency and you must leave town or your witness is unavailable, then you should immediately contact the judge or the court clerk. If you explain the situation to the judge’s secretary or the clerk, it may be possible to delay the trial.

Different judges require differing degrees of formality in trial procedure. Some may follow a formal procedure, while others may just informally ask each party for his or her side of the case. If the court follows formal procedure the trial will progress as follows:

1. opening remarks by the judge;
2. plaintiff's opening statement;
3. defendant's opening statement;
4. plaintiff's evidence;
5. defendant's evidence;
6. plaintiff's rebuttal and closing argument;
7. defendant's closing argument;
8. plaintiff's rebuttal to closing argument; and,
9. judge's decision.

Sometimes the judge does not make a decision in court, but waits a few days and mails out an opinion. There are reasons for this. Sometimes the judge wants to carefully examine or review the evidence or the case law. Other times the judge wants to give the parties time to calm down or wants to avoid a scene in the courtroom.

## PREPARATION FOR TRIAL

You should prepare your case so you can present it quickly and in an orderly manner. Review the possible claims and what you must prove for each type of claim contained in Chapter 3. You should be sure that you have some proof for each element of your claim in order to win your lawsuit based on that claim.

You should be sure your witnesses will be available (see Chapter 7) and be sure you know what their testimony will be. If they do not have a good memory of the facts, you may not want them to come to the trial.

## PRESENTING YOUR CASE

While the rules of law are the basis for all court decisions, there are certain other factors that must be considered.

- APPEARANCE Appearance is important. Many judges consider shorts or tattered jeans disrespectful of the court system and might be prejudiced against a party because of such attire. On the other hand, if someone dresses too well and wears too much heavy gold jewelry, there might also be prejudice against that person.
- ATTITUDE One of the most important parts of the case, other than the facts themselves, is your attitude in court. If you sound sincere and are respectful to the judge, he or she will have more sympathy for your case than if you are rude and make it clear that you will not pay even if you lose.
- PREPARATION While you should be prepared for court, you should not bring prepared statements to be read. Make a list of the important points you plan to cover and refer to your list to be sure that you do not miss any of them.
- THE JUDGE Pay attention to the judge's questions and answer them directly. If the judge does not seem to understand, ask him or her if you should explain. Do not ramble on about meaningless points. Do not say that everyone knows the defendant is a crook. Just explain the facts of your case. Listen carefully to what the judge is asking. It is often an important legal question that will decide the outcome of your case. If you do not understand the question, ask him or her to explain it.
- COURTESY Do not interrupt the other party and do not accuse them of lying. Be polite and wait for your turn to explain or to cross-examine them. While the other side is testifying you should take notes. If the other side lies about something or says something that needs to be explained, write it down. When the other side is done testifying, you will have a chance to cross-examine. At this point you can bring up statement inconsistencies.
- CROSS EXAMINATION The cross examination is not the time to tell your side of the case. You must ask the other party questions. You should ask them questions that show flaws in their argument. For instance, if they say you could never clean their pool correctly, ask them if they continuously used your services for five years. If they say they never borrowed the money from you, ask them why they were sending you checks every month.

Only ask questions that will make them look bad. If they say you never made any repairs in the apartment, do not ask them what items you did not fix—they will make a long list and you will only look worse. Ask them, “Did I fix the faucet in April? Did I fix the roof in June?”

Whatever you do, do not lie under oath. It is a criminal offense. If the other side lies, explain it to the judge when it is your turn to testify. If you explain your side truthfully, it will probably be more believable anyway.

#### WITNESSES

Use your witnesses to verify your side of the facts. Ask the witnesses questions that will lead to answers verifying your side of the facts. Tell the witness ahead of time to be brief and to only answer the questions asked of him or her. Tell him or her not to go into long stories unless asked to. If you have five witnesses to the same facts, ask the judge if he or she wants to hear all of them. If the defendant has no witnesses and you have five, the judge may only want to hear one or two, or may only have a single question for the other witnesses.

Sometimes a judge will tell you the other witnesses will not be necessary. At other times the judge will be noncommittal and say it is up to you. In the latter situation, your best bet would be to bring all of the witnesses in, but just ask each witness one or two key questions. If you waste a lot of time or make the judge miss lunch, he or she will not feel very kindly towards your view of the facts.

## IF YOUR DEFENDANT CARRIES ON A BUSINESS

If your claim involves the conduct of the defendant’s business you should call to the attention of your judge that New York law (Section 1804 of the various Court Acts) provides that the judge or arbitrator must determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member. Your claim will involve the conduct of the defendant’s business if, for example, you are suing over property that the defendant sold to you and selling this property is the defendant’s

business. This information could become important to you in respect to enforcement of your judgment, since most defendants will be concerned about your notification to any such authority that the defendant refuses to pay for a judgment that you have obtained. But for you to notify any such professional association you need to know about them. Now is a good time to ask the judge to compel the defendant to disclose this information.

## THINKING ABOUT THE ENFORCEMENT OF YOUR JUDGMENT

If you suspect that the defendant will fail to pay a judgment rendered in your favor, you should also ask that the judge inquire about the defendant's assets. Section 1805 of all of the Small Claims Acts (see Appendix A) provides "that the court may order the examination of or disclosure by, the defendant and restrain him to the same extent as if a restraining notice had been served upon him after judgment was entered." This means that your judge has the power to inquire into the defendant's assets while the defendant is under oath. Moreover, the judge may then issue a restraining order from disposing of any of those assets at your hearing. This action on the part of the judge can save you a lot of hassle when it comes to the enforcement of the judgment, which is discussed in Chapter 8.

If you really think that you are going to have a problem receiving what you are owed, you may even want to ask about *disbursements*, prospective fees that you will have to pay in order to file a copy of the transcript of your proceeding with the county clerk, and the sheriff's fees for receiving and returning an execution of the defendant's property (these procedures are discussed in Chapter 9). These disbursements are allowable under the various Court Acts, Section 1908.





# RULES OF EVIDENCE

# 7

With a few exceptions, evidentiary rules that apply in a lawsuit brought in a regular part of a court do not apply to small claims actions. This is a good thing for the average layperson since such rules could easily fill up this entire book.

While you will not have to worry about knowing all the rules that lawyers must consider when making objections during a regular trial, you still must consider what type of evidence you will need in order to convince the judge that you should win your case.

## PRIMA FACIE EVIDENCE

New York law states that an itemized bill or invoice receipted or marked paid, or two itemized estimates for services or repairs are admissible in evidence and are *prima facie* evidence of the reasonable value and necessity of such services and repairs. *Prima facie* is a Latin term which means “presumed true.” This rule of law is important and you should pay careful attention to it in order to win your small claims case. The rule is like a rule that says that if the parking meter official writes down that he or she placed a parking ticket on your car, this means (is *prima facie* evidence of) that the ticket was affixed unless you can prove otherwise. Similarly, if you come to court with an itemized

bill for services or repairs or you have two itemized estimates for such services or repairs, then you have proved the reasonable value of these services or repairs and their necessity, unless your opponent can prove otherwise.

While cases have still been won without a plaintiff bringing to court an itemized bill marked paid or two itemized estimates in a lawsuit seeking damages for services or repairs made, the chances of winning such a case without this evidence are greatly reduced.

## WITNESSES

Parties can be their own witnesses, but disinterested witnesses are better. Before bringing a witness to court, be sure to find out what the witness will say. If there are several witnesses, you want to have the best witness for your side of the case.

To be sure a witness will appear in the court, you can subpoena him or her. You can also use what is called a **SUBPOENA DUCES TECUM** to compel a witness to bring some piece of evidence to your hearing. (see form 10, p.125.) However, you should realize that if people do not want to miss work, and you subpoena them, they may not be your best witness.

Some people, such as relatives or employees, will come at your request and do not have to be subpoenaed. But if you ask someone to come to court and they do not show up, the trial will go on without their testimony. If you have any doubts that your witnesses will show up, you should subpoena them.

To require witnesses to appear in court, you must pay them a witness fee, which is currently fifteen dollars. There is also a fee for mileage, which is currently twenty-three cents per mile to and from the courthouse from the place that you serve your witness. However, no mileage fee is required if your witness is doing all of their traveling within the boundaries of a city. For a person who is not a witness to the incident,

but who is an expert, you will have to pay them an expert witness fee. This can be whatever they wish to charge (see below).

If your witness refuses to answer your subpoena, it is punishable as a *contempt* of court. The subpoenaed person is also liable to the person on whose behalf the subpoena was issued for a penalty of up to fifty dollars, as well as for damages sustained by reason of the failure to comply.

The clerk of the court should be able to assist you with preparing a SUBPOENA and is listed as an authorized person who can issue a subpoena without a court order. (see form 9, p.123.) The clerk may have forms you can use as a SUBPOENA, or you can use the forms which appear in Appendix C. The SUBPOENA is served to the person named in your SUBPOENA in the same manner as a summons, which generally means that you should personally serve the SUBPOENA on the individual named in the subpoena. Personal service is completed by having someone who is eighteen years or older and who is not a party to your lawsuit personally deliver the SUBPOENA to the person named. Your server should also complete an AFFIDAVIT OF SERVICE OF SUBPOENA and file this affidavit with the clerk after making the service. (see form 11, p.127.)

## EXPERT WITNESSES

In some cases, it is important to have an expert witness. When trying to prove some work was done wrong, it is best to have an expert testify that he examined the work and that it was done wrong.

**Example:** If you are sued for not paying for an air conditioning repair and you feel the repairman never repaired it correctly, you should bring in another repairman who examined the unit. If you say you fixed it yourself, or your brother-in-law says it was not putting out cold air, it will not be as convincing as if you bring in a repairman with twenty years experience who says it obviously did not have enough freon and that he fixed it.

You may have to pay an expert to investigate your claim and to appear in court. An expert witness does not have to accept the standard fifteen dollar witness fee, but can charge whatever he or she thinks they are worth. Some experts charge hundreds of dollars per hour. You should check with a few possible expert witnesses before deciding whom to hire. To cut down the expense of having an expert travel to court, ask the judge if he or she may testify by telephone.

## PRIVILEGED COMMUNICATIONS

Evidentiary rules of a regular lawsuit do not apply to a small claims hearing with respect to statutory provisions relating to privileged communications.

### ATTORNEY-CLIENT

One of the most well-known statutory *privileged communications* relates to anything that is said between a client and his or her attorney. Unless a client somehow waives this privilege, an attorney is not allowed to disclose, nor can the attorney be compelled to disclose, any confidential communication made with his or her client during the course of legal representation. Moreover, no employee, nor any other person who obtains, without the knowledge of the client, evidence of a confidential communication between an attorney and his or her client can disclose or be compelled to disclose such communication.

It is unlikely, that you will need to invoke your attorney-client privilege in small claims court, but if you are ever asked for information that you may have told your attorney, you can invoke this privilege and prevent the required disclosure of such information.

### DOCTOR-PATIENT

A second privileged communication that is probably not as well-known as the attorney-client privilege is any confidential communication made between a patient and his or her physician, dentist, podiatrist, chiropractor, or nurse. Unless such a patient waives this privilege, no person who is authorized to practice medicine, who is a registered nurse, or licensed to practice dentistry, podiatry, or chiropractic medicine can dis-

close any information obtained in attending to the patient in such a professional capacity. The applicability of this privilege also applies to a medical corporation, a professional service corporation organized to practice medicine, and a university facility practice corporation.

The privilege between applicable medical personnel and a patient can have broad implications. Not only can such a privilege be invoked in court to prevent testimony of such a privilege, but lawsuits have also been brought against physicians for a breach of this privilege.

## TESTIMONY CONCERNING DECEASED OR MENTALLY ILL PEOPLE

A second and final exception to the general rule that evidentiary rules of a suit brought in the regular part of a court do not apply to the small claims part relates to testimony concerning a personal transaction or communication with a deceased or mentally ill person. Under New York law, a party to the lawsuit or any other interested person may not be examined as a witness in his or her own behalf or interest concerning a personal transaction or communication between the witness and the deceased or mentally ill person. However, such a party can testify through a representative as to facts of an accident where the proceeding involves a claim of negligence and where one or more parties is the representative of the deceased or incompetent person based on the operation or ownership of a motor vehicle being operated on New York highways.

You will most likely never have a need to use this evidentiary rule in small claims court. The rule is most often invoked in will cases in which an interested person, such as a beneficiary, wants to testify as to what a decedent said in respect to the decedent's will.

## PROOF

In criminal law a defendant must be guilty *beyond a reasonable doubt*. That is a strong burden to overcome. But in civil court a party need only prove his case by a *preponderance of the evidence*, which means anything over 50% (even 50.0001%). The judge will look at the evidence for each side and will see whose evidence is greater and decide the case accordingly. Even if there is some doubt, the person who has the greater weight of evidence will win.

## PAROL EVIDENCE RULE

This rule provides that where parties to a contract have reduced the contract to a written document, then such parties are not permitted to introduce evidence of conversations that took place before the making of the contract, or conversations that occurred during the making of the written contract so as to try to change the terms of the written contract. The rationale for this rule is that such *extrinsic evidence* (evidence outside the contract) is presumed to have been merged into the written contract. When parties set down their agreement into a written document, the document should speak for itself.

The *parol evidence* rule is truly a topic which has many intricacies and in fact is studied at the law school level. It is not technically a rule of evidence, and thus applies to small claims as well as to commercial claims (those small claims brought by a corporation, partnership, etc.).

Depending on which side you are on this could be either a blessing or a curse. In either case you should be aware that if your case involves a written contract, evidence as to conversations which took place either before or during the making of that written contract should not be allowed by the judge (or your arbitrator) in order to prove that the contract is not as its terms say.

# COLLECTING YOUR JUDGMENT

# 8

Enforcing the judgment that you have won in a small claims case can be the most difficult task you will encounter relating to your case. One of the hardest things you will face is simply learning what types of assets that your defendant has. Hopefully you will have already asked your judgment to inquire about your defendant's assets. As explained in Chapter 6, this is a right that you have at your court hearing. This chapter will discuss some other ways that you can find out about your particular judgment debtor's assets.

Once you know what your defendant owns. Your second task is to go after those assets. This chapter will discuss two important tools for you to go about doing that; namely, the property and income execution.

## FIRST STEPS

Once you have won your case, you are only half way to recovery. Next, you must try to collect on your judgment. A judgment is only a finding by the court that money is owed. A person cannot be put in jail for not paying a judgment. Unfortunately for plaintiffs, debtors' prison has been abolished. The only thing you can do if a person does not pay a judgment is look for his or her property and have the sheriff seize it. If a person has no property, your judgment may be worthless. To look for property which may be available for seizure, you should check the following:



1. The Department of Assessment and Taxation in your town or city for real estate owned by the defendant. (Check other town or city departments if you think they own property elsewhere.) You can search for real estate either under the name of the defendant or you can search the address of a particular property to see if the defendant owns that property.
2. To find information on vehicles the defendant owns you can obtain a form entitled "Request for driver and/or vehicle record information" from your local New York State Department of Motor Vehicles. By providing the name of the defendant or plate number and class of vehicle owned by the defendant, you can find out the defendant's current vehicle information and if you know the vehicle identification number on a vehicle, you can find out the current owner, plate number, and lien information on that vehicle. After completing the form, you mail your request to:

New York State Department of Motor Vehicles  
Division of Duty Preparation  
Empire State Plaza  
Albany, New York 12228-0430

The current fee is five dollars for each search requested.

## INFORMATION SUBPOENAS

If your judgment remains unsatisfied, you may serve what is called an **INFORMATION SUBPOENA** upon any person or upon an officer, director, agent or an employee of a corporation, partnership or sole proprietorship. An information subpoena is simply a list of questions pertaining to the judgment debtor's current or future property. This subpoena is a useful device that you can use to find exactly what your judgment debtor owns so that you can take steps to collect your judgement from such assets.

The person you choose to serve your **INFORMATION SUBPOENA** must answer your questions separately and fully under oath and return these answers within six days after receiving your questions. If this person

fails to do this, you can seek to have the small claims court hold this person in contempt of court.

The clerk of the small claims court can help you with preparing an information subpoena and may have a form that you can use. One type of form that you can use as an INFORMATION SUBPOENA appears in Appendix C. (see form 12, p.129.) You must serve your information subpoena along with one copy of it by registered or certified mail, return receipt requested. You must also include a prepaid (i.e. stamped) return envelope addressed to yourself.

INFORMATION SUBPOENAS can be served not only on the judgment debtor, but also on a bank in which you think your judgment debtor may maintain an account. Typical questions to ask the bank in such a case would be the following:

- Does the judgment debtor maintain an account at your bank?
- What is the account number and balance of that account?

Once you obtain this information from the bank, you should now have enough information to provide it to a local enforcement officer, such as a sheriff, who can levy on the bank account. (see “Property Executions” on page 70.)

## RIGHT TO OBTAIN CONSUMER CREDIT REPORTS

A consumer reporting agency can, under New York General Business Law, Section 380-b, furnish to an inquiring judgment creditor information in connection with collection of an account of a judgment debtor. This credit report could provide you with another means of obtaining information bearing on your debtor’s assets.

## EXEMPT PROPERTY

Not all property of a debtor may be seized. Before taking action to seize a defendant’s property you must understand what property is exempt

under New York law. Here are just some of the property that is exempt from satisfaction of your money judgment.

REAL PROPERTY

Certain real property that a judgment debtor owns and occupies as a principle residence is exempt for satisfaction of your money judgment. This real property includes the following:

- lot of land with a dwelling on the land;
- shares of stock in a cooperative apartment corporation;
- units of a condominium apartment; or,
- a mobile home.

One exception to this exemption is when your judgment was recovered wholly for the purchase price of any one of the above types of real property. Also, any value of the types of real property above in excess of \$10,000 (taking into account any other liens and encumbrances like mortgages that would reduce the value of the property) is not exempt.

PERSONAL  
PROPERTY

The following are a few of the types of personal property that are exempt from application to the satisfaction of a money judgment except where the judgment is for the purchase price of the exempt property or was recovered by a domestic laboring person or mechanic for work performed by that person in such capacity:

- all wearing apparel;
- household furniture;
- one mechanical, gas or electric refrigerator;
- one radio receiver;
- one television set;
- crockery, tableware, and cooking utensils necessary for the judgment debtor and the family; and,
- necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furni-

ture, and library, not exceeding six hundred dollars in value which are necessary to the carrying on of the judgment debtor's profession.

TRUST PROPERTY

All property held in trust for a judgment debtor, in which the trust has been created by, or the fund so held in trust has proceeded from a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment. This exemption applies to all trusts, custodial accounts, annuities, insurance contracts, monies, assets, or interests established as part of, and all payments from, either any trust or plan that is qualified as an individual retirement account even though such judgment debtor is an individual who is the depositor to such account plan.

SECURITY  
DEPOSITS

Money deposited as security for the rental of real property to be used as the residence of the judgment debtor or the judgment debtor's family is exempt from application to the satisfaction of a money judgment.

## DOCKETING YOUR JUDGMENT

After your judgment has been entered you should take steps to docket your judgment with the county clerk. You do this by simply requesting a transcript of your judgment from your small claims court and then filing that transcript with the county clerk's office in the county in which your judgment was rendered.

*Docketing* your judgment means that the county clerk will record your judgment under the name of the defendant in docket books. Once you docket your judgment, the judgment becomes a lien for a period of ten years on all real property that the defendant owns in that county. If the defendant subsequently transfers his or her real property, your lien will continue to remain on the real property.

If you know that the defendant owns real property in some other county besides the county in which your judgment was made, you can also docket your judgment in that county to perfect a lien on that real

property. But you must always first docket your judgment in the county in which your judgment was rendered before docketing your judgment in any other county.

Besides creating a lien against the defendant's real property located in the county in which you have docketed your judgment, docketing your judgment gives you another significant advantage in that your judgment will subsequently be given the status of a supreme court judgment; you will now be able to issue *executions* out of the supreme court giving you statewide enforcement powers to satisfy your judgment.

## PROPERTY EXECUTION

A **PROPERTY EXECUTION** is simply a form to an appropriate enforcement officer, usually a sheriff, directing that enforcement officer to levy or sell any non-exempt property that the defendant has ownership in order to pay off your judgment. The execution is required to contain certain information, such as the date the judgment was rendered, the court in which it was rendered, the amount of the judgment, and the names of the parties. An execution must also state that only the property in which a named judgment debtor who is not deceased has an interest, or the debts owed to the named judgment debtor be levied on or sold and must specify the last known address of the judgment debtor. You will also be required to identify and locate the defendant's property in the execution.

An execution is issued either from the clerk of the court or your attorney as officer of the particular court you are using to issue the execution. If you have docketed your judgment with the county clerk (see the previous section on "Docketing Your Judgment"), you can issue your execution using the supreme court. This has an advantage in that the execution will be enforceable against both real and personal property of the defendant throughout New York state.

You can also issue your execution using the court that heard your small claims case, but you will be restricted to levying only against personal

property of the defendant. If you choose to use the court that heard your small claims case, you will also be restricted as to the geographical area in which you can levy the defendant's property.

**Example:** If you issue your execution through the clerk of your town, village, or city court, you can only levy against personal property of the defendant that is located in the county in which your court is located. If you issue your execution using the New York City Civil Court, your judgment can only be levied on personal property of the defendant located in the city of New York.

## INCOME EXECUTION

If your judgment debtor is employed and earns more than \$127.50 per week *disposable income*, you can file an *income execution* (otherwise known as a garnishee) against your debtor. (Disposable income is the income that your debtor has left after deducting things that are required by law to be deducted before your debtor takes home his or her paycheck, such as taxes.)

You can think of an income execution as simply a way for you to attach part of what your judgment debtor earns each week. That part will be set aside and given to you.

Under New York law, if your debtor's disposable earnings are \$127.50 or less, you cannot file this income execution. If your debtor's disposable earnings are more than \$127.50 and less than \$170.00, you can file an income execution for the lesser of the excess over \$127.50, or ten percent of his or her gross income. If your debtor's disposable earnings are \$170.00 or more, you can file an income execution for the lesser of twenty-five percent of disposable earnings, or ten percent of gross income.

The rules governing the issuance of a property execution also apply to the issuance of an income execution. (See "Property Execution" on the previous page.) An income execution which is delivered to the sheriff must contain the following statement:

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF UP TO TEN PERCENT OF THE JUDGMENTS DEBTOR'S GROSS INCOME. IN CERTAIN CASES, HOWEVER, STATE OR FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THAT MUCH OF THE JUDGMENT DEBTOR'S GROSS INCOME. THE JUDGMENT DEBTOR IS REFERRED TO NEW YORK CIVIL PRACTICE LAW AND RULES Section 5231 AND 15 UNITED STATES CODE Section 1671 ET SEQ.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD.

A. AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S GROSS INCOME CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME.

B. IF A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS ARE LESS THAN THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (\$5.25, PER HOUR), OR (157.50), NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

C. A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS CANNOT BE REDUCED BELOW THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (\$5.25, PER HOUR), OR (\$157.50), UNDER THIS INCOME EXECUTION.

D. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

E. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNINGS MADE UNDER THIS EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS.

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

II. EXPLANATION OF LIMITATIONS

DEFINITIONS:

DISPOSABLE EARNINGS

DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE, TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NO DEDUCTIONS FOR UNION DUES, INSURANCE PLANS. ETC.).

GROSS INCOME

GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

ILLUSTRATIONS REGARDING EARNINGS:

IF DISPOSABLE EARNINGS IS:	AMOUNT TO PAY OR DEDUCT UNDER THIS INCOME EXECUTION IS:
(a) 30 TIMES FEDERAL MINIMUM WAGE (\$127.50) OR LESS	
(b) MORE THAN 30 TIMES FEDERAL MINIMUM WAGE (\$127.50) AND LESS THAN 40 TIMES FEDERAL MINIMUM WAGE (\$170.00)	THE LESSER OF: THE EXCESS OVER 30 TIMES THE FEDERAL MINIMUM WAGE (\$127.50) IN DISPOSABLE EARNINGS, OR 10% OF GROSS EARNINGS
(c) 40 TIMES THE FEDERAL MINIMUM WAGE (\$170.00)	THE LESSER OF: 25% OF DISPOSABLE EARNINGS OR OR MORE 10% OF GROSS EARNINGS.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR Section 5231(I) AND CPLR Section 5240

IF YOU THINK THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD ACT PROMPTLY BECAUSE THE MONEY WILL BE APPLIED TO THE JUDGMENT IF YOU CLAIM THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD CONTACT YOUR EMPLOYER OR OTHER PERSON PAYING YOUR INCOME. FURTHER, YOU MAY CONSULT AN ATTORNEY, INCLUDING LEGAL AID IF YOU QUALIFY. NEW YORK STATE LAW PROVIDES TWO PROCEDURES THROUGH WHICH AN INCOME EXECUTION CAN BE CHALLENGED:

CPLR Section 5231(I) MODIFICATION. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER MODIFYING AN INCOME EXECUTION.

CPLR Section 5240 MODIFICATION OR PROTECTIVE ORDER: SUPERVISION OR ENFORCEMENT. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER DENYING, LIMITING, CONDITIONING, REGULATING, EXTENDING OR MODIFYING THE USE OF ANY POST-JUDGMENT ENFORCEMENT PROCEDURE, INCLUDING THE USE OF INCOME EXECUTIONS.



## BANKRUPTCY

If the defendant files bankruptcy, all legal actions must immediately stop. You can be held in contempt of federal court if you take any action to further your case or acquire the defendant's property. If the defendant files liquidation bankruptcy then your claim is wiped out and you are forever barred from collecting on it. If the defendant files reorganization bankruptcy, you may be paid, in full or in part, at a later time. If a bankruptcy is withdrawn before the debtor is discharged, you may proceed with your claim.

## IF YOUR JUDGMENT INVOLVES THE DEFENDANT'S BUSINESS

If your judgment was based on dealing with the defendant's business, there are some other rules that you should consider in respect to enforcement of your judgment. For example, you (the judgment creditor) may be entitled to bring a second lawsuit against your judgment debtor for triple the amount of your judgment that your debtor refuses to pay, plus all reasonable attorney fees, plus the costs and disbursement of this second action if the following conditions are met:

- there is a recorded judgment in your favor in a small claims court;
- your judgment must have resulted from transactions in the course of your judgment debtor's trade or business or out of a repeated course of dealing or conduct of your debtor;
- there are at least two other unsatisfied recorded judgments of a small claims court arising out of your debtor's trade or business or repeated course of dealing or conduct. Since unsatisfied small claims court judgments are required to be indexed alphabetically and chronologically under the name of a defendant, you should be able to ascertain this condition quite quickly; and,
- you must have given your judgment debtor notice of your judgment by certified mail, return receipt requested, and your debtor

has failed to satisfy your judgment within thirty days after receipt of this notice. Your notice must contain a statement that your judgment exists, that at least two other unsatisfied recorded judgments exist, and that failure to pay your judgment may be the basis for an action for triple the amount of your unsatisfied judgment.

Even if all of the above conditions exist and you bring a second suit, your judgment debtor will have a defense against such action if he or she did not have resources to satisfy your judgment within thirty days after receipt of notice.

#### LICENSING

If a business licensed by a state or local licensing authority refuses to pay a judgment that has been rendered against it, the licensing authority must consider this as a basis for revocation, suspension, or refusal to renew the license. This occurs when:

- the suit related to activities that require a license;
- the judgment remains unpaid for thirty-five days after the judgment debtor receives notice of its entry;
- the judgment has not been stayed or appealed; and,
- failure to pay was deliberate, or part of a pattern of similar conduct indicating recklessness.

You may find this law beneficial in persuading your debtor to satisfy your judgment, since any license will surely have great value to your debtor.

#### FRAUD

You should also be aware that New York Law provides that if a defendant appears to be engaged in repeated fraudulent or illegal acts, in carrying on, conducting, or transacting business, the court must either advise the attorney general or advise you to do the same. The court must also advise the appropriate state or local licensing or certifying authority or advise you to do the same.

## WHERE JUDGMENT IS RENDERED IN OTHER THAN THE TRUE NAME OF THE DEFENDANT

Surprising enough, you are actually rewarded when your judgment is rendered in a name other than the *true name* of the defendant and remains unsatisfied. The true name means the legal name of a natural person and the name under which a partnership, firm, or corporation is licensed, registered, incorporated, or otherwise authorized to do business.

Under New York law, if a judgment is rendered in a name other than the true name of a judgment debtor and has remained unpaid for thirty-five days after receipt, the judgment debtor receives notice of its entry, you are entitled to commence an action in small claims court or any other court of competent jurisdiction against such debtor, for the sum of your original judgment, plus reasonable attorney's fees, plus \$100. This should be an incentive for judgment debtors to disclose their true name.

# APPEALING 9

A defendant who fails to appear at the hearing on the day and time fixed will be held in default. No default can be ordered if the defendant or his attorney appears within one hour after the time fixed for the hearing.

Clearly, having a default judgment rendered against you is not a good position to be in. You should make every effort to attend your hearing; otherwise, you will more than likely lose your case without ever having an opportunity to put your case forward. If you are in a position in which you find that you cannot attend your hearing, you should make every effort to notify the court *prior* to the time that a default judgment is rendered against you.

## VACATING A DEFAULT

If a default judgment has been rendered against you by a small claims court, the small claims court has the power to relieve you from this judgment upon the ground of excusable default. Generally, *excusable default* means that your default must be excusable, and you must show that you have either a *meritorious* claim or defense to the action. Examples of excusable default might be that you did not receive any actual notice of the lawsuit, or you believed your attorney was handling your case. A **MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT** form is contained in Appendix C. (see form 15, p.135.)

## FILING AN APPEAL

After losing a hard-fought case, a person's first reaction is to promise an appeal. However, one must realize that appeals of small claims judgments are difficult to win.

When a trial court hears a case, it decides questions of fact and questions of law. Usually the questions of fact are most important: Were the repairs done correctly? Was the bill paid in cash? Was a notice mailed to the tenant? Questions of law concern the legal rights of the parties under those facts.

### QUESTIONS OF FACT

Questions of fact are never appealable. An appeals court can only review the *legal* decision of the judge, which is not often wrong. If the judge did not believe you did a good repair job or did not believe one of your witnesses, you do not get a second chance to convince an appeals court or to bring more witnesses. The appeals court will review the legal decision of the judge and accept all of his or her fact findings. Only if the judge made an obvious legal mistake will the judgment be overturned.

### QUESTIONS OF LAW

In addition to the restriction that an appeals court can only review questions of law, an appeals court can only review those questions of law which are *substantive* in nature. Legal principles that are *procedural* in nature, such as how the evidence was presented at your hearing, are not reviewable in a small claims case.

Our legal system is not perfect. Sometimes liars win and there is no way to reverse the decision. The best you can do is be prepared for your trial with the evidence at your disposal.

If you feel the judge made an error of law in deciding your case, you can file a **NOTICE OF APPEAL** within thirty days of the judgment. The clerk of the small claims court should be of assistance in telling you how to file your notice. If the clerk does not provide you with a form that you can use, you can use the **NOTICE OF APPEAL** form in Appendix C. (see form 16, p.137.)

### PROPER COURT

In most cases you will appeal your case to the county court unless an appellate term of the Supreme Court has been established to hear such appeals. Appeals from the New York City Civil Court are taken to the appellate division of the Supreme Court, unless an appellate term of

the Supreme Court has been established to hear such appeals. Again, the clerk of the small claims court should be of assistance in telling you the correct court to appeal your case. After you have completed filling out your notice of appeal, you must mail a copy to your opposing party and file another copy with the clerk of the small claims court.

#### OBSTACLES

Another obstacle to an appeal is the requirement that you furnish the appeals court with a record of your hearing before the small claims court judge. The procedure can be costly and time consuming for you.

**Example:** In a case when no stenographic record of your hearing was made, you must mail a statement of the proceedings from your own recollection to your opponent. The opponent may then mail to you any objections or proposed amendments to this statement, and then all of this material must be submitted for settlement to the judge who heard your case.

If a stenographic record of your proceedings was made, you will be required to purchase this record from the court reporter and go through a similar procedure of sending a copy to your opponent and waiting for any objections made to the transcript. The best advice to properly file your appeal is to obtain from your appeals court their own rules on how you perfect your appeal. You can also look at the rules on appeals contained in Civil Practice Law and Rules, Article 55.

The mailing of a notice of appeal will automatically *stay* (prevent) all proceedings to enforce a judgment for the payment of money pending the appeal where you (the appellant) furnish an *undertaking* with the court in the amount of the judgment. (An *undertaking* is like a type of bond that you need to pay in order to show the court that you are able to satisfy the judgment if you lose your appeal.) If you do not furnish this undertaking, your opponent may still be able to enforce the judgment while your appeal is in progress.

## DEADLINES

Appeals must be filed within thirty days after personal delivery of the judgment or within thirty-five days after the judgment is mailed to you by a party to the action, or by the clerk of the court. Since the procedure can be complicated, it is usually advantageous to seek the advice of an attorney.



# GLOSSARY

## A

**accord and satisfaction.** When one party agrees to accept less than the full amount of a debt the agreement is sometimes called an accord and satisfaction.

**actual damages.** Out of the pocket expenses or losses which you have suffered as a result of another person's wrongdoing.

**adjournment.** A delay or postponement of some scheduled hearing relating to a lawsuit.

**affidavit.** A sworn (before a notary) statement.

**alias service.** A second attempt to serve papers on a party.

**answer.** A paper filed by a party in response to a legal pleading.

**arbitration.** Where your case is decided before a third person in a non-court alternative setting. Cases are usually decided quicker at an arbitration.

**assault.** An attempt, displayed by violence or a threatening gesture, to injure another person.

**assets.** Includes real property like houses on land as well as personal property such as automobiles.



## B

**battery.** An unlawful touching or striking of or the use of force against another person.

## C

**city court.** If you live in a city outside of New York City, then there is a city court located where you live.

**claim.** The type of lawsuit which you are bringing. For example, if you are suing your tenant, a typical claim might be one for unpaid rent.

**claimant.** The person who is asserting a legal right in court. Generally, the claimant is the plaintiff. However, if the defendant files a counterclaim, the defendant may also be referred to as a claimant.

**commercial claim.** A money action brought by a corporation, partnership, or association that has its principal office in New York state in the commercial claims part of the court. The maximum amount of such claim is equivalent to the maximum amount that can be brought in the small claims part.

**compensatory damages.** Damages awarded to restore a plaintiff to the position he or she was in before a wrong was committed.

**conservator.** A person who is appointed by a court to take control of the property of another person.

**consumer transaction.** A transaction where the money, property or service that is the subject of the transaction is used primarily for personal, family or household purposes.

**contempt.** Person(s) who refuse to follow orders of a court can be held by the court to be in "contempt" of the court. It is a word that describes someone who disobeys a court.

**counter-defendant.** When the defendant files a counterclaim, the plaintiff in the original suit is the counter-defendant in the counterclaim.

**counter-plaintiff.** When the defendant files a counterclaim, he or she is the counter-plaintiff in the counterclaim.

**counterclaim.** When a defendant countersues a plaintiff, he or she files a counterclaim.

**crossclaim.** When there are two or more defendants and one defendant sues another defendant in the same suit, he or she files a crossclaim against the other defendant.

## D

**default judgment.** A judgment which is granted against a party for failing to appear at a scheduled hearing.

**defendant.** Person defending against a claim.

**demand letter.** A letter which must be sent to a defendant prior to bringing a commercial claim which is based on a consumer transaction (transactions relating to personal, family or household purposes).

**disbursements.** This includes costs for filing a small claims action or even costs for enforcing a judgment.

**disclosure.** This denotes the revealing of information which might not otherwise be known.

**disposable income.** Think of this as like net income. It is the income after you take out taxes.

**district court.** These courts exist only on Long Island.

**docketing.** Denotes the filing of a judgment so that the world is put on notice that the judgment exists.

## E

**executions.** These are means to attach a defendant's property.

**excusable default.** Sometimes a failure to appear at a scheduled hearing is due to some legitimate excuse and constitutes an excusable default.

**extrinsic evidence.** When speaking about a written contract, any words outside the contract is often termed "extrinsic evidence."

## F

**false advertising.** Advertising that is misleading in some material respect.

**fictitious name.** A name that is different from one's legal name. People often carry on a business in names which differ from their true names.

**foreign corporation.** This is a corporation which is organized under the laws outside New York State.

**fraud.** This is some untrue representation of fact made with the intent to deceive someone else.

## G

**grantee.** Someone who receives land or property.

**guardian ad litem.** A person who is appointed by a court to manage the affairs of another person.

## I

**impleading.** The practice of bringing other parties into a lawsuit.

**implied warranty.** A guarantee does not have to be expressly made in all cases. Sometimes guarantees are implied in the law. Warranties are often implied for goods sold by people who are in the business of selling such goods.

**income execution.** This denotes the attachment of a person's wages to satisfy an outstanding judgment.

**interest.** Money that can be earned on money that is owed.

## J

**jurisdiction.** This refers to a court's control or ability to decide a case. For example, if you bring your case in the wrong court, that court will not have jurisdiction over your defendant.

**justice courts.** A term sometimes used to denote town and village courts..

**justice of the peace.** This term is sometimes used to denote a town court.

## L

**lemon law.** A special law that relates to the sale of automobiles.

**lien.** A legal right to property for a debt owed.

**limited partnership.** A legal entity that can carry on a business just like an individual person. The entity is made up of more than one individuals who are called "partners." However, the actual day to day management of the partnership by these partners is restricted or limited.

**liquidation bankruptcy.** A formal proceeding filed in court in order to erase debts owed.

## M

**mediation.** Sometimes it is easier and quicker to settle disputes before an arbitrator in a non-traditional court setting. This type of dispute settlement is often referred to as mediation or arbitration.

**meritorious.** This term is used to denote legitimate or valid.

**misdemeanor.** A crime that usually carries a maximum possible prison penalty of less than 1 year.

**motion.** A request for a court to do something.

## N

**necessity.** Something that is required for living such as food or shelter.

**negligence.** A type of lawsuit based on the carelessness of another person. For example, if another person carelessly backs into your car, that person is negligent.

**notice of claim.** A notice that informs a defendant of the time and place for his or her hearing.

## P

**parol evidence rule.** A special rule that bars the admission into court of any type of evidence which is outside what is contained in a written agreement.

**plaintiff.** Person filing a claim.

**pluries service.** A third or subsequent attempt to serve papers on a person.

**prevailing party.** The winning party in a lawsuit.

**prima facie evidence.** Evidence that is sufficient to establish a fact in your case and, if unrebutted, remains sufficient to establish that fact.

**privileged communications.** Certain communications between people are deemed in the law to be so private that they are inadmissible in the courtroom.

**procedural.** This term is used to denote a rule that affects how a court case should proceed rather than say what you need to prove to win a lawsuit.

**promissory note.** A promise to pay a debt owed.

**property execution.** A means to attach both personal and real property of a judgment debtor.

**public corporation.** A corporation entity formed to serve the public at large.

**punitive damages.** Damages awarded to a plaintiff in order to punish a defendant and restrain a defendant from committing similar wrongs in the future.

## R

**real estate.** This term is used to denote land and the dwellings on such land.

**replevin.** A suit for return of property.

**res judicata.** This refers to a case having already been decided.

## S

**self-defense.** This term is used to denote an action taking to legitimately protect the safety of one-self.

**service of process.** The act of handing court papers to a party in the case.

**small claims court.** These are courts used to collect small sums of money.

**special application.** Think of this as a petition or demand to a court.

**special damages.** Damages that go beyond the actual out-of pocket losses suffered by a party.

**statute of frauds.** A special statute which requires that certain agreements must be in writing in order to be enforceable.

**statute of limitations.** A special statute which sets time limits for bringing various lawsuits.

**stay.** These are often issued in respect to the enforcement of a judgment while the case resulting in the judgment is on appeal. Basically, a stay is an order that prevents something from occurring.

**stipulation.** An agreement over a particular matter.

**Subpoena Duces Tecum.** A document issued by the court ordering a person to bring something to a hearing.

**subpoena.** A document issued by the court ordering a person to appear at a hearing.

**substantiative.** This relates to the actual elements necessary to prove for a particular lawsuit rather than merely just rules on how the proceeding is to occur.

**summary proceeding.** A type of action used by landlords to evict tenants.

**summons.** A court document informing someone of a court action.

## T

**third party defendant.** When a defendant wants to bring another party into the suit, that party is the third party defendant.

**town and village courts.** courts which exist in the town and villages of each county in New York outside New York City.

**true name.** your legal name.

## U

**undertaking.** This is like a bond to guarantee the payment of money owed.

**usury.** A greater rate for the use of money loaned than is allowed by law.

## V

**village police justice.** This term is sometimes used to denote a village court.

## W

**warranty.** Think of a warranty as a type of guarantee.

# APPENDIX A

## NEW YORK

### SMALL CLAIMS RULES

Following are the laws of New York which will be most relevant to your case. If you wish to obtain clarification or proof for something written in this book, your best bet is to consult these laws since they make up the greatest percentage of laws that are applicable to how a small claims or commercial claims case proceeds. We have included the City Court rules in this appendix. You should be able to find the other laws in the legal section of your library. However, some libraries may not have all of these laws, in which case you will need to go to a law library. You can find law libraries at law schools, and near your local Courthouse.

If you are suing in a **city court**, your case will be governed by the **Uniform City Court Act Sections 1801-1814 (Sections 1801A-1814A for commercial claims)** as well as by the **Uniform Civil Rules for the City Courts outside the City of New York Section 210.41 (Section 210.41a for commercial claims)**.

If you are suing in the **New York City Civil Court** your case will be governed by the **New York City Civil Court Act Sections 1801-1814 (1801A-1814A for commercial claims)** as well as by the **Uniform Civil Rules for the New York City Civil Court Section 208.41 (Section 208.41a for commercial claims)**.

If you are suing in a **Town or Village court**, your case will be governed by the **Uniform Justice Court Act Sections 1801-1814** as well as by the **Uniform Civil Rules for the Justice Courts Section 214.10**.

If you are suing in a **District Court**, your case will be governed by the **Uniform District Court Act Sections 1801-1814 (Sections 1801A-1814A for commercial claims)** as well as by the **Uniform Rules for the District Courts Section 212.41 (Section 212.41a for commercial claims)**.



## Article 18 Small Claims

### Section 1801. Small claims defined

The term "small claim" or "small claims" as used in this act shall mean and include any cause of action for money only not in excess of *three* thousand dollars exclusive of interest and costs, provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the county. In a city court having a basic monetary jurisdiction in civil matters of less than one thousand dollars, the small claims jurisdiction of such court shall be equal to its basic monetary jurisdiction.

### Section 1802. Parts for the determination of small claims established

The chief administrator shall assign the times and places for holding, and the judges who shall hold, one or more parts of the court for the hearing of small claims as herein defined, and the rules may regulate the practice and procedure controlling the determination of such claims and prescribe and furnish the forms for instituting the same. There shall be at least one evening session of each part every month for the hearing of small claims, provided however, that the chief administrator may provide for exemption from this requirement where there exists no demonstrated need for evening sessions. Such practice, procedure and forms shall differ from the practice, procedure and forms used in the court for other than small claims, notwithstanding any provision of law to the contrary. They shall constitute a simple, informal and inexpensive procedure for the prompt determination of commercial claims in accordance with the rules and principles of substantive law. The procedure established pursuant to this article shall not be exclusive of but shall be alternative to the procedure now or hereafter established with respect to actions commenced in the court by the service of a summons. No rule to be enacted pursuant to this article shall dispense with or interfere with the taking of stenographic minutes of any hearing of any small claim hereunder, except that in cities with a population of fifty thousand or less hearings may be recorded mechanically.

### Section 1803. Commencement of action upon commercial claims

(a) Small claims shall be commenced upon the payment by the claimant of a filing fee of ten dollars for claims in the amount of one thousand dollars or less and fifteen dollars for claims in the amount of more than one

thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a statement of his cause of action by the claimant or someone in his behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his residence, if he resides within the county, and his residence is known to the claimant, or at his office or place of regular employment within the county if he does not reside therein or his residence within the county is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim.

Such procedure shall further provide for an early hearing upon and determination of such claim. No filing fee, however, shall be demanded or received on small claims of employees who shall comply with § 1912 of this act which is hereby made applicable, except that necessary mailing costs shall be paid.

(b) The clerk shall furnish every claimant, upon commencement of the action, with information written in clear and coherent language which shall be prescribed and furnished by the office of court administration, concerning the small claims court. Such information shall include, but not be limited to, an explanation of the following terms and procedures; adjournments, counterclaims, jury trial requests, subpoenas, arbitration and collection methods and fees, *the responsibility of the judgment creditor to collect data on the judgment debtor's assets, the ability of the court prior to entering judgment to order examination of or disclosure by, the defendant and restrain him*, the utilization of section eighteen hundred twelve of this article concerning treble damage awards and information subpoenas including, but not limited to, specific questions to be used on information subpoenas, and the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment if it arises out of the carrying on, conducting or transaction of a licensed or certified business or if such business appears to be engaged in fraudulent or illegal acts or otherwise demonstrates fraud or illegality in the carrying on, conducting or transaction of its business *and a list of at least the most prominent state or local licensing or certifying authorities and a description of the business categories such licensing or certify-*

*ing authorities oversee.* The information shall be available in English. Large signs in English shall be posted in conspicuous locations in each small claims court clerk's office, advising the public of its availability.

**Section 1804. Informal and simplified procedure on commercial claims**

The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person. An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances. *In every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or certifying authorities and any business or professional association of which the defendant is a member.* The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control.

**Section 1805. Remedies available; transfer of small claims**

(a) Upon determination of a small claim, the court shall direct judgment in accordance with its findings, and, when necessary to do substantial justice between the parties, may condition the entry of judgment upon such terms as the court shall deem proper. *Pursuant to section fifty-two hundred twenty-nine of the civil practice law and rules prior to entering a judgment, the court may order the examination of or disclosure by, the defendant and restrain him to the same extent as if a restraining notice had been served upon him after judgment was entered.*

(b) The court shall have power to transfer any small claim or claims to any other part of the court upon such terms as the rules may provide, and proceed to hear the same according to the usual practice and procedure

applicable to other parts of the court.

(c) No counterclaim shall be permitted in a small claims action, unless the court would have had monetary jurisdiction over the counterclaim if it had been filed as a small claim. Any other claim sought to be maintained against the claimant may be filed in any court of competent jurisdiction.

(d) If the defendant appears to be engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transaction of business, the court shall either advise the attorney general in relation to his authority under subdivision twelve of section sixty-three of the executive law, or shall advise the claimant to do same, but shall retain jurisdiction over the small claim.

(e) If the defendant appears to be engaged in fraudulent or illegal acts or otherwise demonstrates fraud or illegality in the carrying on, conducting or transaction of a licensed or certified business, the court shall either advise the appropriate state or local licensing or certifying authority or shall advise the claimant to do same, but shall retain jurisdiction over the small claim.

**Section 1806. Trial by jury; how obtained; discretionary costs**

A person commencing an action upon a small claim under this article shall be deemed to have waived a trial by jury, but if said action shall be removed to a regular part of the court, the plaintiff shall have the same right to demand a trial by jury as if such action had originally been begun in such part. Any party to such action, other than the plaintiff, prior to the day upon which he is notified to appear or answer, may file with the court a demand for a trial by jury and his affidavit that there are issues of fact in the action requiring such a trial, specifying the same and stating that such trial is desired and intended in good faith. Such demand and affidavit shall be accompanied with the jury fee required by law and an undertaking in the sum of fifty dollars in such form as may be approved by the rules, payable to the other party or parties, conditioned upon the payment of any costs which may be entered against him in the said action or any appeal within thirty days after the entry thereof; or, in lieu of said undertaking, the sum of fifty dollars may be deposited with the clerk of the court and thereupon the clerk shall forthwith transmit such original papers or duly attested copies thereof as may be provided by the rules to the part of the court to which the action shall have been transferred and assigned and such part may require pleadings in such action as though it had been begun by the service of a

summons. Such action may be considered a preferred cause of action. In any small claim which may have been transferred to another part of the court, the court may award costs up to twenty-five dollars to the claimant if the plaintiff prevails.

**Section 1807. Proceedings on default and review of judgments**

A person commencing an action upon a small claim under this article shall be deemed to have waived all right to appeal, except that either party may appeal on the sole grounds that substantial justice has not been done between the parties according to the rules and principles of substantive law.

**Section 1808. Judgment obtained to be res judicata in certain cases**

A judgment obtained under this article may be pleaded as res judicata only as to the amount involved in the particular action and shall not otherwise be deemed an adjudication of any fact at issue or found therein in any other action or court.

**Section 1809. Procedures relating to corporations, associations, insurers and assignees**

No corporation, except a municipal corporation or public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit, no partnership, or association and no assignee of any small claim shall institute an action or proceeding under this article, nor shall this article apply to any claim or cause of action brought by an insurer in its own name or in the name of its insured whether before or after payment to the insured on the policy.

A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case.

**Section 1810. Limitation on right to resort to commercial claims procedures**

If the clerk shall find that the procedures of the small claims part are sought to be utilized by a claimant

for purposes of oppression or harassment, as where a claimant has previously resorted to such procedures on the same claim and has been unsuccessful after the hearing thereon, the clerk may in his discretion compel the claimant to make application to the court for leave to prosecute the claim in the small claim part. The court upon such application may inquire into the circumstances and, if it shall find that the claim has already been adjudicated, or that the claim is sought to be brought on solely for purposes of oppression or harassment and not under color of right, it may make an order denying the claimant the use of the small claims part to prosecute the claim.

**Section 1811. Notice of small claims judgments and indexing of unpaid claims**

(a) Notice of judgment sent to judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or combination of the following actions:

1. garnishment of wage;
2. garnishment of bank account;
3. a lien on personal property;
4. seizure and sale of real property;
5. seizure and sale of personal property, including automobiles;
6. suspension of motor vehicle license and registration, if claim is based on defendant's ownership or operation of a motor vehicle;
7. revocation, suspension, or denial of renewal of any applicable business license or permit;
8. investigation and prosecution by the attorney general for fraudulent or illegal business practices; and
9. a penalty equal to three times the amount of the unsatisfied judgment plus attorney's fees, if there are other unpaid claims.

(b) Notice of judgment sent to judgment creditor shall contain but not be limited to the following information:

1. the claimant's right to payment within thirty days following the debtor's receipt of the judgment notice.
2. the procedures for use of section eighteen hundred twelve of this article concerning the identification of assets of the judgment debtor *including the use of information subpoenas, access to consumer credit reports and the role of sheriffs and marshals*, and actions to collect three times the judgment award and attorney's fees if there are two

- 3. other unsatisfied claims against the debtor;
- 4. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;
- 5. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if claim is based on defendant's ownership or operation of a motor vehicle;
- 6. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of business license; and
- 7. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and
- 8. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) All wholly or partially unsatisfied small claims court judgments shall be indexed alphabetically and chronologically under the name of the defendant. *Upon satisfying the judgment, the defendant shall present appropriate proof to the court and the court shall indicate such in the records.*

**Section 1812. Enforcement of small claims judgments**

(a) The special procedures set forth in subdivision (b) hereof shall be available only where:

- 1. there is a recorded judgment of a small claims court; and
- 2. (i) the aforesaid judgment resulted from a transaction in the course of the trade or business of the judgment debtor, or arose out of a repeated course of dealing or conduct of the judgment debtor, and (ii) there are at least two other unsatisfied recorded judgments of a small claims court arising out of such trade or business or repeated course of dealing or conduct, against that judgment debtor; and
- 3. the judgment debtor failed to satisfy such judgment within a period of thirty days after receipt of notice of such judgment. Such notice shall be given in the same manner as provided for the service of a summons or by

certified mail, return receipt requested, and shall contain a statement that such judgment exists, that at least two other unsatisfied recorded judgments exist, and that failure to pay such judgment may be the basis for an action, for treble the amount of such unsatisfied judgment, pursuant to this section.

(b) Where each of the elements of subdivision (a) of this section are present the judgment creditor shall be entitled to commence an action against said judgment debtor for treble the amount of such unsatisfied judgment, together with reasonable counsel fees, and the cost and disbursements of such action, provided, however, that in any such action it shall be a defense that the judgment debtor did not have resources to satisfy such judgment within a period of thirty days after receipt of notice of such judgment. The failure to pay a judgment obtained in an action pursuant to this section shall not be the basis for another such action pursuant to this section.

(c) Where the judgment is obtained in an action pursuant to subdivision (b), and arises from a business of the defendant, the court shall, in addition to its responsibilities under this article, advise the attorney general in relation to his authority under subdivision twelve of section sixty-three of the executive law, and if such judgment arises from a certified or licensed business of the defendant, advise the state or local licensing or certifying authority.

(d) Where a judgment has been entered in a small claims court and remains unsatisfied, the small claims clerk shall, upon request, issue information subpoenas, at nominal cost, for the judgment creditor and provide the creditor with assistance on their preparation and use. *The court shall have the same power as the supreme court to punish a contempt of court committed with respect to an information subpoena.*

**Section 1813. Duty to pay judgments**

(a) Any person, partnership, firm or corporation which is sued a small claims court for any cause of action arising out of business activities, shall pay any judgment rendered against it in true name or in any name in which it conducts business. "True name" includes the legal name of a natural person and the name under which a partnership, firm or corporation is licensed, registered, incorporated or otherwise authorized to do business. "Conducting business" as used in this section shall include, but not limited to, maintaining signs at business premises or on business vehicles; advertising; entering into contracts;

and printing or using sales slips, checks, invoices or receipts. Whenever a judgment has been rendered against a person, partnership, firm or corporation other than its true name and the judgment has remained unpaid thirty-five days after receipt by the judgment debtor of notice of its entry, the aggrieved judgment creditor shall be entitled to commence an action in small claims court against such judgment debtor, notwithstanding the jurisdictional limit of the court, for the sum of the original judgment, costs, reasonable attorney's fees, and one hundred dollars.

(b) Whenever a judgment which relates to activities for which a license is required has been rendered against a business which is licensed by a state or local licensing authority and which remains unpaid for thirty-five days after receipt by the judgment debtor of notice of its entry and the judgment has not been stayed or appealed, the state or local licensing authority shall consider such failure to pay, if deliberate or part of a pattern of similar conduct indicating recklessness, as a basis for the revocation, suspension, conditioning or refusal to grant or renew such license. Nothing herein shall be construed to preempt an authority's existing policy if it is more restrictive.

(c) The clerk shall attach to the notice of suit required under this article a notice of the duty imposed by this section.

#### **Section 1814. Designation of defendant; amendment procedure**

(a) A party who is ignorant, in whole or in part, of the true name of a person, partnership, firm or corporation which may properly be made a party defendant, may proceed against such defendant in any name used by the person, partnership, firm or corporation in conducting business, as defined in subdivision (a) of section eighteen hundred thirteen of this article.

(b) If the true name of the defendant becomes known at any time prior to the hearing on the merits, such information shall be brought to the attention of the clerk, who shall immediately amend all prior proceedings and papers. The clerk shall send an amended notice to the defendant, without payment of additional fees by the plaintiff, and all subsequent proceedings and papers shall be amended accordingly.

(c) In every action in the small claims part, at the hearing on the merits, the judge or arbitrator shall determine the defendant's true name. The clerk shall amend all prior proceedings and papers to conform to such determination, and all subsequent proceedings and papers shall be amended accordingly.

(d) A party against whom a judgment has been entered pursuant to this article, in any proceeding under section five thousand fifteen of the civil practice law and rules for relief from such judgment, shall, disclose its true name; any and all names in which it is conducting business; and any and all names in which it was conducting business at the time of the transaction or occurrence on which such judgment is based. All subsequent proceedings and papers shall be amended to conform to such disclosure.

#### **Section 1815. Appearance by non-attorney representatives**

The court may permit, upon the request of a party, that a non-attorney representative, who is related by consanguinity or affinity to such party, be allowed to appear on behalf of such party when the court finds that due to the age, mental or physical capacity or other disability of such party that it is in the interests of justice to permit such representation. No person acting as a non-attorney representative shall be permitted to charge a fee or be allowed to accept any form of remuneration for such services.

**ARTICLE 18-A — COMMERCIAL CLAIMS**

**Section 1801-A. Commercial claims defined**

(a) The term “commercial claim” or “commercial claims” as used in this act shall mean and include any cause of action for money only not in excess of the *maximum amount permitted for a small claim in the small claims part of the court*, exclusive of interest and costs, provided that subject to the limitations contained in section eighteen hundred nine-A of this article, the claimant is a corporation, partnership or association, which has its principal office in the state of New York and provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the county *in which the court is located*. In a city court having a basic monetary jurisdiction in civil matters of less than one thousand dollars, the commercial claims jurisdiction of such court shall be equal to its basic monetary jurisdiction.

(b) Consumer transaction defined. The term “consumer transaction” means a transaction between a claimant and a natural person, wherein the money property or service which is the subject of the transaction is primarily for personal, family or household purposes.

**Section 1802-A. Parts for the determination of commercial claims established**

The chief administrator shall assign the times and places for holding, and the judges who shall hold, one or more parts of the court for the hearing of commercial claims as herein defined, and the rules may regulate the practice and procedure controlling the determination of such claims and prescribe and furnish the forms for instituting the same. There shall be at least one evening session of each part every month for the hearing of commercial claims, provided however, that the chief administrator may provide for exemption from this requirement where there exists no demonstrated need for evening sessions. *The chief administrator shall not combine commercial claims part actions with small claims part actions for purposes of convenience unless a preference is given to small claims and to commercial claims arising out of consumer transactions.* Such practice, procedure and forms shall differ from the practice, procedure and forms used in the court for other than small claims and commercial claims, notwithstanding any provision of law to the contrary. They shall constitute a simple, informal and inexpensive procedure for the prompt determination of commercial claims in accordance with the rules and principles of substantive law. The procedure established pursuant to

this article shall not be exclusive of but shall be alternative to the procedure now or hereafter established with respect to actions commenced in the court by the service of a summons. No rule to be enacted pursuant to this article shall dispense with or interfere with the taking of stenographic minutes of any hearing of any business claim hereunder, except that in cities with a population of fifty thousand or less hearings may be recorded mechanically.

**Section 1803-A. Commencement of action upon commercial claims**

(a) Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action of proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his residence, if he resides within the county in which the court is located, and his residence is known to the claimant, or at his office or place of regular employment within such county if he does not reside therein or his residence within the county is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim pursuant to subdivision (d) of this section.

Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment.

Either party may request that the hearing be sched-

uled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

(b) Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

Such verified certificate shall certify (i) that the claimant has mailed by ordinary first class mail to the party complained against a demand letter, no less than ten days and no more than one hundred eighty days prior to the commencement of the claim, and (ii) that, based upon information and belief, the claimant has not instituted more than five actions or proceedings (including the instant action or proceeding) during the calendar month.

A form for the demand letter shall be prescribed and furnished by the state office of court administration and shall require the following information: The date of the consumer transaction; the amount that remains unpaid; a copy of the original debt instrument or other document underlying the debt and an accounting of all payments, and, if the claimant was not a party to the original transaction, the names and addresses of the parties to the original transaction; and a statement that the claimant intends to use this part of the court to obtain a judgment, that further notice of a hearing date will be sent, unless payment is received by a specified date, and that the party complained against will be entitled to appear at said hearing and present any defenses to the claim.;

In the event that the verified certificate is not properly completed by the claimant, the court shall not allow the action to proceed until the verified certificate is corrected. Notice of such claim shall be sent by the clerk by both ordinary first class mail and certified mail with return receipt requested to the party complained against at his

residence, if he resides within the county in which the court is located, and his residence is known to the claimant, or at his office or place of regular employment within such county if he does not reside therein or his residence is not known to the claimant. If, after the expiration of thirty days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim.

Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment. Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

(c) The clerk shall furnish every claimant, upon commencement of the action, and every party complained against, with the notice of claim, and with information written in clear and coherent language which shall be prescribed and furnished by the state office of court administration, concerning the commercial claims part. Such information shall include, but not be limited to, the form for certification and filing by the claimant that no more than five such actions or proceedings have been instituted during that calendar month, and an explanation of the following terms and procedures; adjournments, counter claims, jury trial requests, evening hour requests, demand letters in cases concerning consumer transactions, default judgments, subpoenas, arbitration and collection methods, *the responsibility of the judgment creditor to collect data on the judgment debtor's assets, the ability of the court prior to entering judgment to order examination of or disclosure by, the defendant and restrain him*, and fees. The information shall be available in English and, if the chief administrator requires it, in Spanish shall be posted in conspicuous locations in each commercial claims part clerk's office, advising the public of its availability.

(d) A defendant who wishes to file a counterclaim shall do so by filing with the clerk a statement containing such counterclaim within five days of receiving the notice of claim. At the time of such filing the defendant shall pay to the clerk a filing fee of three dollars plus the cost of mail-

ings which are required pursuant to this subdivision. The clerk shall forthwith send notice of the counterclaim by ordinary first class mail to the claimant. If the defendant fails to file the counterclaim in accordance with the provisions of this subdivision, the defendant retains the right to file the counterclaim, however the claimant may, but shall not be required to, request and obtain adjournment of the hearing to a later date. The claimant may reply to the counterclaim but shall not be required to do so.

**Section 1804-A. Informal and simplified procedure on commercial claims**

The court shall conduct hearings upon commercial claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person. An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, and admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in commercial claims procedure except upon order of the court on showing of proper circumstances. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article in case of conflict, the provisions of this article shall control.

**Section 1805-A. Remedies available; transfer of commercial claims**

(a) Upon determination of a commercial claim, the court shall direct judgment in accordance with its findings, and, when necessary to do substantial justice between parties, may condition the entry of judgment upon such terms as the court shall deem proper. *Pursuant to section fifty-two hundred twenty-nine of the civil practice law and rules prior to entering a judgment, the court may order the examination of or disclosure by, the defendant and restrain him to the same extent as if a restraining notice had been served upon him after judgment was entered.*

(b) The court shall have power to transfer any commercial claim or claims to any other part of the court upon such terms as the rules may provide, and proceed to hear

the same according to the usual practice and procedure applicable to other parts of the court.

(c) No counterclaim shall be permitted in a commercial claims action, unless the court would have had monetary jurisdiction over the counterclaim if it had been filed as a *commercial* claim. Any other claim sought to be maintained against the claimant may be filed in any court of competent jurisdiction.

(d) If the defendant appears to be engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transaction of business, the court shall either advise the attorney general in relation to his authority under subdivision twelve of section sixty-three of the executive law, or shall advise the claimant to do same, but shall retain jurisdiction over commercial claim.

(e) If the defendant appears to be engaged in fraudulent or illegal acts or otherwise demonstrates fraud or illegality in the carrying on, conducting or transaction of a licensed or certified business, the court shall either advise the appropriate state or local licensing or certifying authority or shall advise the claimant to do same, but shall retain jurisdiction over the commercial claim.

**Section 1806-A. Trial by jury; how obtained; discretionary costs**

A claimant commencing an action upon a commercial claim under this article shall be deemed to have waived a trial by jury, but if said action shall be removed to a regular part of the court, the claimant shall have the same right to demand a trial by jury as if such action had originally been begun in such part. Any party to such action, other than the claimant, prior to the day upon which he is notified to appear or answer, may file with the court a demand for a trial by jury and his affidavit that there are issues of fact in the action requiring such a trial, specifying the same and stating that such trial is desired and intended in good faith. Such demand and affidavit shall be accompanied with the jury fee required by law and an undertaking in the sum of fifty dollars in such form as may be approved by the rules, payable to the other party or parties, conditioned upon the payment of any costs which may be entered against him in the said action or any appeal within thirty days after the entry thereof; or, in lieu of said undertaking, the sum of fifty dollars may be deposited with the clerk of the court and thereupon the clerk shall forthwith transmit such original papers or duly attested copies thereof as may be provided by the rules to the part of the court to which the action shall have been transferred and assigned and such part may require



pleadings in such action as though it had been begun by the service of a summons. Such action may be considered a preferred cause of action. In any commercial claim which may have been transferred to another part of the court, the court may award costs up to twenty-five dollars to the claimant if the claimant prevails.

#### **Section 1807-A. Proceedings on default and review of judgments**

(a) A claimant commencing an action upon a commercial claim under this article shall be deemed to have waived all right to appeal, except that either party may appeal on the sole grounds that substantial justice has not been done between the parties according to the rules and principles of substantive law.

(b) The clerk shall mail notice of the default judgment by first class mail, both to the claimant and to the party complained against. Such notice shall inform the defaulting party, in language promulgated by the state office of court administration, of such party's legal obligation to pay; that failure to pay may result in garnishments, repossessions, seizures and similar actions; and that if there was a reasonable excuse for the default the defaulting party may apply to have the default vacated by submitting a written request to the court.

(c) Proceedings on default under this article are to be governed by, but are not limited to, section five thousand fifteen of the civil practice law and rules.

#### **Section 1808-A. Judgment obtained to be res judicata in certain cases**

A judgment obtained under this article may be pleaded as res judicata only as to the amount involved in the particular action and shall not otherwise be deemed an adjudication of any fact at issue or found therein in any other action or court.

#### **Section 1809-A. Procedures relating to corporations, associations, insurers and assignees**

(a) Any corporation, including a municipal corporation or public benefit corporation, partnership, or association, which has its principal office in the state of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

(b) No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or

be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for purpose of bringing an action or proceeding thereon under this article.

(c) A corporation, partnership or association, which institutes an action or proceeding under this article shall be limited to five such actions or proceedings per calendar month. Such corporation, partnership or association shall complete and file with the clerk the required certification, provided it is true and verified as to its truthfulness, as a prerequisite to the institution of an action or proceeding in this part of the court.

(d) A corporation may appear as a party in any action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in a commercial claims part case.

#### **Section 1810-A. Limitation on right to resort to commercial claims procedures**

If the clerk shall find that the procedures of the commercial claims part are sought to be utilized by a claimant for purposes of oppression or harassment, as where a claimant has previously resorted to such procedures on the same claim and has been unsuccessful after the hearing thereon, the clerk may in his discretion compel the claimant to make application to the court for leave to prosecute the claim in the commercial claim part. The court upon such application may inquire into the circumstances and, if it shall find that the claim has already been adjudicated, or that the claim is sought to be brought on solely for purposes of oppression or harassment and not under color of right, it may make an order denying the claimant the use of the commercial claims part to prosecute the claim.

#### **Section 1811-A. Indexing commercial claims part judgments**

All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

**Section 1812-A. Enforcement of commercial claims judgments**

Where a judgment has been entered in a commercial claims part and remains unsatisfied, the commercial claims clerk shall, upon request, issue information subpoenas, at nominal cost, for the judgment creditor and provide the creditor with assistance on their preparation and use.

**Section 1813-A. Duty to pay judgments**

(a) Any person, partnership, firm or corporation which is sued a commercial claims part for any cause of action arising out of business activities, shall pay any judgment rendered against it in true name or in any name in which it conducts business. "True name" includes the legal name of a natural person and the name under which a partnership, firm or corporation is licensed, registered, incorporated or otherwise authorized to do business. "Conducting business" as used in this section shall include, but not limited to, maintaining signs at business premises or on business sales slips, checks, invoices or receipts. Whenever a judgment has been rendered against a person, partnership, firm or corporation other than its true name and the judgment has remained unpaid thirty-five days after receipt by the judgment debtor of notice of entry, the aggrieved judgment creditor shall be entitled to commence an action in commercial claims part against such judgment debtor, notwithstanding the jurisdictional limit of the court, for the sum of the original judgment, costs, reasonable attorney's fees, and one hundred dollars.

(b) Whenever a judgment which relates to activities for which a license is required has been rendered against a business which is licensed by a state or local licensing authority and which remains unpaid for thirty-five days after receipt by the judgment debtor of notice of its entry and the judgment has not been stayed or appealed, the state or local licensing authority shall consider such failure to pay, if deliberate or part of a pattern of similar conduct indicating recklessness, as a basis for the revocation, suspension, conditioning or refusal to grant or renew such license. Nothing herein shall be construed to preempt an authority's existing policy if it is more restrictive.

(c) The clerk shall attach to the notice of suit required under this article a notice of the duty imposed by this section.

**Section 1814-A. Designation of defendant; amendment procedure**

(a) A party who is ignorant, in whole or in part, of the true name of a person, partnership, firm or corporation which may properly be made a party defendant, may proceed against such defendant in any name used by the person, partnership, firm or corporation in conducting business, as defined in subdivision (a) of section eighteen hundred thirteen-A of this article.

(b) If the true name of the defendant becomes known at any time prior to the hearing on the merits, such information shall be brought to the attention of the clerk, who shall immediately amend all prior proceedings and papers. The clerk shall send an amended notice to the defendant, without payment of additional fees by the plaintiff, and all subsequent proceedings and papers shall be amended accordingly.

(c) In every action in the commercial claims part, at the hearing on the merits, the judge or arbitrator shall determine the defendant's true name. The clerk shall amend all prior proceedings and papers to conform to such determination, and all subsequent proceedings and papers shall be amended accordingly.

(d) A party against whom a judgment has been entered pursuant to this article, in any proceeding under section five thousand fifteen of the civil practice law and rules for relief from such judgment, shall disclose its true name; any and all names in which it is conducting business; and any and all names in which it was conducting business at the time of the transaction or occurrence on which such judgment is based. All subsequent proceedings and papers shall be amended to conform to such disclosure.



# APPENDIX B

## SMALL CLAIMS CHECKLIST

### FOR THE DEFENDANT

#### 1. Prior to Trial (Hearing):

- r Have you tried to work it out with the other side?
- r Should you hire a lawyer?
- r Do you have a defense which would bar the claim?
- r Should you countersue or implead another defendant?
- r Gather all the evidence.
- r Subpoena witnesses and evidence if necessary.

#### 2. Attend the trial:

- r Be prepared to explain your side clearly and quickly.
- r Be on time. Dress appropriately. Be polite.
- r Be prepared to settle if the plaintiff makes a good offer.

#### 3. After the trial:

##### If you won a countersuit:

- r See if plaintiff plans to pay.
- r Docket your judgment.
- r If Plaintiff refuses to pay the following:
  - r Serve an information subpoena.
  - r Issue a property execution.
  - r Issue an income execution.

##### If you lost:

- r Should you stipulate to avoid a judgment?
- r Was it a default which can be vacated?
- r Should you request a rehearing?
- r Is there an issue to appeal?
- r Should you pay?

## FOR THE PLAINTIFF

### 1. Decide if you should sue:

- r Did you try to work it out with the other side?
- r Is there a legal theory which would make the defendant liable?
- r Do you have enough evidence to win the case?
- r Does the defendant have any defenses?
- r Does the defendant have any money or property you could seize?

### 2. Prepare your case:

- r Gather evidence.
- r Talk to witnesses.
- r Prepare your statement of claim.
- r File your case.

### 3. Before the trial:

- r Gather all the evidence.
- r Subpoena witnesses and evidence if necessary.

### 4. Attend the trial:

- r Be prepared.
- r Be on time. Dress appropriately. Be polite.
- r Be prepared to settle if the defendant makes a good offer.

### 5. After the trial:

#### If you won a countersuit:

- r See if defendant plans to pay.
- r Docket your judgment.
- r If the defendant refuses to pay consider the following:
  - r Serving an information subpoena.
  - r Issuing a property execution.
  - r Issuing an income execution.

#### If you lost:

- r Should you stipulate to avoid a judgment?
- r Was it a default which can be vacated?
- r Should you request a rehearing?
- r Is there an issue to appeal?
- r Should you pay?

# APPENDIX C

## BLANK FORMS

The forms on the following pages are explained throughout the book. Some counties have their own forms. If forms are available in your county, then you should use those forms. Judges and court clerks are more comfortable using forms that they have used before. But if your county does not provide forms, or if your type of claim is not covered by an available form, then use the forms in this book.

1. APPLICATION TO FILE CLAIM . . . . . 107  
*(This form is an example of the application which you will be required to complete in order to start your claim. These forms will be provided to you by the clerk of the small claims court.)*
  
2. DEMAND LETTER . . . . . 109  
*(If you are bringing your claim as a corporation, partnership, or association, you must mail this form to the defendant no less than ten days and no more than 180 days prior to the time that you file your claim. The clerk of your court will probably have Demand letter forms which you can use or you may use this form.)*
  
3. NOTICE OF CLAIM. . . . . 111  
*(This form is an example of the form the clerk of a small claims court will mail to a defendant to provide notice of a claim. The clerk of the small claims court will have this form and is responsible for sending it.)*

4. DEMAND FOR JURY TRIAL . . . . .	113
<i>(If you are a defendant to a small claims case you have the right to demand a jury trial; use this form if you want to make such a demand and attach the following affidavit. See chapter 4 for more information.)</i>	
5. AFFIDAVIT IN SUPPORT OF DEMAND FOR JURY TRIAL . . . . .	115
<i>(If you have made a demand for a jury trial, you must complete and attach this form.)</i>	
6. NOTICE OF CLAIM FOR PERSONAL INJURY . . . . .	117
<i>(Use this form if you plan to sue a county, city, town or village for a personal injury which you received due to the municipality's negligence. Service of this form on the municipality is a prerequisite to you bringing suit. See chapter 3 for more details.)</i>	
7. NOTICE OF CLAIM FOR PROPERTY DAMAGE . . . . .	119
<i>(Use this form if you plan to sue a county, city, town or village for damage to your property due to such municipality's negligence. Service of this form is a prerequisite to you bringing suit. See chapter 3 for more details.)</i>	
8. PROMISSORY NOTE . . . . .	121
<i>(If the time period for your bringing suit is just about up, you may want to have the defendant sign a promissory note. This is considered a new agreement and the limitation period is six years from the date the final payment is due.)</i>	
9. SUBPOENA . . . . .	123
<i>(You can use this form to compel a person to attend and testify at your hearing. Be sure to attach an affidavit of service of subpoena if you use this form. See chapter 7 for more information.)</i>	
10. SUBPOENA DUCES TECUM . . . . .	125
<i>(This form may be used to compel a witness to bring some piece of evidence to your hearing. Be sure to attach an affidavit of service of subpoena if you use this form. See chapter 7 for more details.)</i>	
11. AFFIDAVIT OF SERVICE OF SUBPOENA . . . . .	127
<i>(Have the person who serves a subpoena or subpoena Duce Tecum issued by the court fill out this affidavit and then file it with the court.)</i>	

12. INFORMATION SUBPOENA . . . . .	129
<i>(In order to collect a judgment if the defendant refuses to pay, you will need to know what types of assets the defendant has. You can serve this form on the defendant to force the defendant to tell you about his or her assets. See chapter 8 for more details on how to serve an information subpoena.)</i>	
13. QUESTIONNAIRE . . . . .	131
<i>(If you serve an Information Subpoena, you will need to attach this questionnaire to it. See chapter 8 for more information.)</i>	
14. SATISFACTION OF JUDGMENT . . . . .	133
<i>(This form can be used to reflect that a judgment which is due has been paid.)</i>	
15. MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT . . . . .	135
<i>(Use this form if a default judgment has been rendered against you, and you want to move the court to set aside this judgment. See chapter 9 for more information.)</i>	
16. NOTICE OF APPEAL . . . . .	137
<i>(In the event you choose to appeal the judgment rendered against you in small claims court, this form can be used to commence your appeal. See chapter 9 for more information.)</i>	
17. PROPERTY EXECUTION . . . . .	139
<i>(If you have docketed your judgment with the supreme court, you can issue this type of execution out of that court directing that a sheriff satisfy your judgment out of the defendant's non-exempt property anywhere in the state!)</i>	
18. INCOME EXECUTION . . . . .	141
<i>(Part of your judgment debtor's income may be subject to the satisfaction of your unpaid judgment. This form can be used to direct the appropriate enforcement officer to obtain the income which is subject to your judgment.)</i>	



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(Example of the application you will be required to complete to start your claim)

**THIS APPLICATION TO FILE CLAIM BECOMES PUBLIC RECORD**

Return to: Small Claim \_\_\_\_\_  
(Name of your court) Commercial Claim \_\_\_\_\_  
Consumer Transaction \_\_\_\_\_

NAME OF CLAIMANT \_\_\_\_\_ DAYTIME PHONE \_\_\_\_\_  
(Name of Person or company filing claim)

**ARE YOU A PARTNERSHIP OR A CORPORATION** (yes) \_\_\_\_\_ (no) \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ ZIP \_\_\_\_\_

NAME OF DEFENDANT \_\_\_\_\_ DAYTIME PHONE \_\_\_\_\_  
(Name of person or company you are filing against)

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ ZIP \_\_\_\_\_

AMOUNT OF CLAIM \$ \_\_\_\_\_ (do not include filing fee) DATE CLAIM AROSE \_\_\_\_\_

NATURE OF CLAIM (The reason you are filing claim) **PLEASE KEEP UNDER 25 WORDS**

\_\_\_\_\_  
SIGNATURE OF CLAIMANT \_\_\_\_\_ TODAY'S DATE \_\_\_\_\_

**THIS SECTION MUST BE COMPLETED AND NOTARIZED FOR A COMMERCIAL CLAIM**

I HEREBY CERTIFY THAT NO MORE THAN FIVE (5) ACTIONS OR PROCEEDINGS (INCLUDING THE INSTANT ACTION OR PROCEEDING) HAVE BEEN INITIATED IN THE COURTS OF THIS STATE DURING THE PRESENT CALENDAR MONTH.

\_\_\_\_\_  
(Signature of Claimant) (Signature of Notary/Clerk/Judge)

ADDRESS OF PRINCIPAL OFFICE (Must be in the State of New York)  
\_\_\_\_\_  
CITY \_\_\_\_\_ ZIP \_\_\_\_\_

Note: The Commercial Claims Part shall have no jurisdiction over and shall dismiss any case where this certification is not made.

**COMPLETE THIS SECTION FOR COMMERCIAL CLAIMS ARISING OUT OF A CONSUMER TRANSACTION**

I HEREBY CERTIFY THAT I HAVE MAILED A DEMAND LETTER BY ORDINARY FIRST CLASS MAIL TO THE PARTY COMPLAINED AGAINST, NO LESS THAT TEN (10) DAYS AND NO MORE THAT ONE HUNDRED EIGHTY (180) DAYS BEFORE I COMMENCED THIS CLAIM.

I HEREBY CERTIFY, BASED UPON INFORMATION AND BELIEF, THAT NO MORE THAT FIVE (5) ACTIONS OR PROCEEDINGS (INCLUDING THE INSTANT ACTION OR PROCEEDING) PURSUANT TO THE COMMERCIAL CLAIMS PROCEDURE HAVE BEEN INITIATED IN THE COURTS OF THIS STATE DURING THE PRESENT CALENDAR MONTH.

\_\_\_\_\_  
(Signature of Claimant) (Signature of Notary/Clerk/Judge)

Note: The Commercial claims Part will not allow your action to proceed if this certification is not made and properly completed.

**FILING FEE: SMALL CLAIM \$10.00 for claims \$1,000.00 and less, \$15.00 for claims over \$1,000.00—  
COMMERCIAL CLAIM \$22.84, CONSUMER TRANSACTION \$22.84**

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COMMERCIAL CLAIM ARISING OUT OF CONSUMER TRANSACTION  
**DEMAND LETTER**

DATE:

TO: \_\_\_\_\_

(Name of Defendant)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Address)

Please take notice that you have failed to pay a debt owed to \_\_\_\_\_ which you incurred on \_\_\_\_\_, \_\_\_\_\_. The amount remaining unpaid on the debt is \$ \_\_\_\_\_.

Demand is hereby made that this money be paid. Unless payment of this amount is received by the undersigned not later than \_\_\_\_\_, \_\_\_\_\_ a lawsuit will be brought against you in the commercial claims part of the court.

If a lawsuit is brought, you will be notified of the hearing date, and you will be entitled to appear at the hearing and present any defense you may have to this claim.

(IF APPLICABLE) Our records show that you have made the following payment(s) in partial satisfaction of this debt:

(Fill in dates and amounts paid)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

A copy of the original debt instrument - your agreement to pay - is attached. The names and addresses of the parties to that original debt agreement are :

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(To be completed if the claimant was not a party to the original transaction)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Typed or printed name & address of claimant)

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(This is an example of the type of notice that a defendant is required to receive)

(Name of Court)

TO: \_\_\_\_\_

Take Notice that \_\_\_\_\_ asks judgment in this Court against you for \$ \_\_\_\_\_ together with costs, upon the following claim: \_\_\_\_\_

\_\_\_\_\_

There will be a hearing before the Court upon this claim on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_M in the Small Claims Part, held at \_\_\_\_\_.

You must appear and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above set forth (a corporation must be represented by an attorney or any authorized officer, director or employee). **IF YOU DO NOT APPEAR, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT EVEN THOUGH YOU MAY HAVE A VALID DEFENSE.** If your defense or counterclaim, if any, is supported by witnesses, account books, receipts or other documents, you must produce them at the hearing. The Clerk, if requested, will issue subpoenas for witnesses, without fee therefor.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing and state to the Court your reasons for desiring time to pay.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk

NOTE: If you desire a jury trial, you must, before the day upon which you have been notified to appear, file with the Clerk of the Court a written demand for a trial by jury. You must also pay to the clerk a jury fee of \$55 and file an undertaking in the sum of \$50, or deposit such sum in cash to secure the payment of any costs that may be awarded against you. You will also be required to make an affidavit specifying the issues of fact which you desire to have tried by a jury and stating that such trial is desired and demanded in good faith.

Under the law, the Court may award \$25 additional costs to the plaintiff if a jury trial is demanded by you and a decision is rendered against you.

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\_\_\_\_\_(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff, }  
} }  
} }  
against }  
} }  
} }  
\_\_\_\_\_  
Defendant. }  
\_\_\_\_\_ }

**Demand for Jury Trial**

PLEASE TAKE NOTICE that \_\_\_\_\_, defendant hereby demands a trial by jury in the above captioned matter.

Dated \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_(signature)

\_\_\_\_\_(address)

\_\_\_\_\_  
\_\_\_\_\_(telephone)



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\_\_\_\_\_  
(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff,  
against  
\_\_\_\_\_  
Defendant.  
\_\_\_\_\_

**Affidavit**

\_\_\_\_\_, being sworn, deposes and says::

I. I am the defendant in the above captioned matter.

II. This action was commenced on \_\_\_\_\_, \_\_\_\_\_.

III. There are issues of fact in this action which require a jury trial. The issues of fact requiring a jury trial are the following.

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Defendant's demand for a trial by jury is desired and intended in good faith.

\_\_\_\_\_(Signature)

Sworn to me on  
This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_(notary)

My commission expires \_\_\_\_\_.

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### Notice of claim for Personal Injury

TO: \_\_\_\_\_(Name of attorney representing county, city, town, or village)

PLEASE TAKE NOTICE that I, \_\_\_\_\_, the claimant herein, hereby makes a claim for negligence against the \_\_\_\_\_,(Name of county, city, town, or village) and that an action will be commenced to recover pursuant to law.

The claimant herein resides at \_\_\_\_\_, county of \_\_\_\_\_, state of New York.

The injury for which this claim is made occurred on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_,(identify place where injury occurred) and was caused when \_\_\_\_\_

\_\_\_\_\_.(state manner in which claim arose)

Said injury was sustained wholly through the negligence of \_\_\_\_\_

\_\_\_\_\_.  
(name of county, city, town, or village)

As a result of said negligence, the claimant has suffered the following personal injury.

\_\_\_\_\_  
\_\_\_\_\_

(detail injuries)

\_\_\_\_\_  
Claimant

Sworn to me on  
This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_(notary)

My commission expires \_\_\_\_\_.

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### Notice of Claim for Property Damage

TO: \_\_\_\_\_ (Name of attorney representing county, city, town, or village)

PLEASE TAKE NOTICE that I, \_\_\_\_\_, the claimant herein, hereby makes a claim for negligence against the \_\_\_\_\_, (Name of county, city, town, or village) and that an action will be commenced to recover pursuant to law.

The claimant herein resides at \_\_\_\_\_, county of \_\_\_\_\_, state of New York.

The property damage for which this claim is made occurred on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, (identify place where injury occurred) and was caused when \_\_\_\_\_

\_\_\_\_\_. (state manner in which claim arose)

Said property damage was sustained wholly through the negligence of \_\_\_\_\_ (name of county, city, town, or village)

As a result of said negligence, the claimant has suffered the following property damage.

\_\_\_\_\_  
\_\_\_\_\_  
(detail damages)

\_\_\_\_\_  
Claimant

Sworn to me on  
This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(notary)

My commission expires \_\_\_\_\_.

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### Promissory Note

For value received, I, \_\_\_\_\_, of  
\_\_\_\_\_(address), \_\_\_\_\_ (city),  
\_\_\_\_\_ County, \_\_\_\_\_ (state), promise to pay  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) to the order of  
\_\_\_\_\_ (Payee), of \_\_\_\_\_  
(address), \_\_\_\_\_ (city), \_\_\_\_\_ County, and  
\_\_\_\_\_ (state) on \_\_\_\_\_ (date) with interest  
thereon at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) annually.

\_\_\_\_\_  
Signature of Maker



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\_\_\_\_\_(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff,

against

Defendant.

**SUBPOENA**

TO:

YOU ARE HEREBY COMMANDED to appear before the Honorable \_\_\_\_\_, one of the Judges of our said court, at \_\_\_\_\_, New York, on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_M., in the above captioned cause. If you fail to appear, you may be in contempt of court.

WITNESS, \_\_\_\_\_, as Clerk of the \_\_\_\_\_, and the seal of said Court, at the Courthouse at \_\_\_\_\_, New York.

\_\_\_\_\_  
Date

(SEAL)

\_\_\_\_\_  
Clerk of the Court

\_\_\_\_\_  
Plaintiff/Defendant  
Address:

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\_\_\_\_\_(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff, }  
} }  
against }  
} }  
\_\_\_\_\_  
Defendant. }  
\_\_\_\_\_ }

**SUBPOENA DUCES  
TECUM**

TO:

YOU ARE HEREBY COMMANDED to appear before the Honorable  
\_\_\_\_\_, one of the Judges of our said Court, at  
\_\_\_\_\_, New York, on \_\_\_\_\_, \_\_\_\_\_, at  
\_\_\_\_\_M., to testify and give evidence in the above styled cause and to have with you at  
said time and place the following:

If you fail to appear, you will be deemed guilty of contempt of court, and liable to pay all loss and  
damage sustained thereby to the party aggrieved, and forfeit \$50 in addition thereto.

WITNESS my hand and seal of said Court on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE COURT

(SEAL)

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\_\_\_\_\_(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff, }  
\_\_\_\_\_  
against }  
\_\_\_\_\_  
Defendant. }  
\_\_\_\_\_ }

**Affidavit of Service of  
Subpoena**

\_\_\_\_\_being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides at \_\_\_\_\_. That on \_\_\_\_\_, \_\_\_\_\_, deponent served the annexed subpoena upon \_\_\_\_\_, the person to whom said subpoena is directed, by then and there delivering to and leaving with him a copy of said subpoena, and by paying to him at the same time and place \_\_\_\_\_dollars as and for his fees for mileage and for one day's attendant as such witness.

The person served was [insert description of the person served including his or her sex, color of skin, hair color, approximate age, approximate weight and height, and other identifying features]

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_(signature of deponent)  
(Type name of deponent)

Sworn to me on  
This \_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_(notary)

My commission expires \_\_\_\_\_.

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STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_  
TOWN OF \_\_\_\_\_

\_\_\_\_\_

Plaintiff - Judgment Creditor

v.

INFORMATION SUBPOENA  
(Small Claims)

Defendant - Judgment Debtor

\_\_\_\_\_

**THE PEOPLE OF THE STATE OF NEW YORK**

TO (Judgment Debtor) \_\_\_\_\_

Address:

WHEREAS, in the above entitled action in the small claims court of the Town Court of the Town of \_\_\_\_\_, a judgment was entered on \_\_\_\_\_, \_\_\_\_\_ in favor of the judgment creditor and against the judgment debtor in the amount of \$ \_\_\_\_\_ which sum together with interest thereon from the date of said judgment remains due and unpaid:

NOW, WHEREFORE WE COMMAND YOU, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying this subpoena, each answer referring to the question to which it responds; and that you return the answers together with the original of the questions within 7 days after your receipt of the questions and this subpoena in the prepaid addressed return envelope enclosed.

TAKE NOTICE that false swearing or failure to comply with this subpoena is punishable as a contempt of court.

\_\_\_\_\_  
HON.  
Town Court of the Town of \_\_\_\_\_  
Mailing Address:

Enclosed: Question form; original and copy.  
Prepaid, addressed return envelope



**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK: COUNTY OF \_\_\_\_\_:ss.:

\_\_\_\_\_ being duly sworn, says: that deponent is not a part to this action, is over 18 years of age and resides at \_\_\_\_\_;

That on \_\_\_\_\_, \_\_\_\_\_ deponent served the within subpoena on the judgment debtor by mailing a copy of same, accompanied by a copy and original of written questions, a prepaid addressed return envelope in a securely sealed postpaid wrapper properly addressed to \_\_\_\_\_ at \_\_\_\_\_.

**Strike out (a) or (b):**

(a) by registered mail, return receipt requested. Deponent delivered said wrapper to the Registry Clerk at the post office and paid the requisite fee. Return Receipt No. \_\_\_\_\_ is attached hereto.

(b) by certified mail, return receipt requested. Deponent delivered said wrapper with the requisite postage and return receipt card affixed, in (a post office) (official depository under the care and custody of the United States Postal Service) within the State of New York. Return Receipt No. \_\_\_\_\_ is attached hereto.

\_\_\_\_\_  
Print name beneath signature

Sworn to before me on \_\_\_\_\_,  
Notary Public

**QUESTIONS AND ANSWERS MADE IN RESPONSE TO THE WITHIN SUBPOENA**

Q. What is your name and address?

A.

Q. Please state. (i) whether the witness has any property, or property in which the judgment debtor has an interest, in its possession, custody, or control; (ii) whether it is indebted to the judgment debtor and whether such debt is due or to become due; (iii) whether it has within the past year had financial, business, or other relations with the judgment debtor either individually or as an agent, employee, trustee, officer, director, or partner of another, describing fully any such property, interest, debt, or relationship.

A.

\_\_\_\_\_

Sworn to me on  
This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_ (Notary)  
My commission expires \_\_\_\_\_

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COUNTY COURT, \_\_\_\_\_ COUNTY, NEW YORK  
SMALL CLAIMS DIVISION  
CASE NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
PLAINTIFF(S)

Address:

VS.

\_\_\_\_\_  
\_\_\_\_\_  
DEFENDANT(S)

Address:

**SATISFACTION OF JUDGMENT**

Plaintiff(s) \_\_\_\_\_, holders of a judgment in the above-styled cause, which judgment was rendered on \_\_\_\_\_, \_\_\_\_\_ against \_\_\_\_\_ in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), and recorded in Official Records Books \_\_\_\_\_ Page \_\_\_\_\_, Public Records of \_\_\_\_\_ County, New York, hereby acknowledge full payment and satisfaction of said judgment, and hereby consent that said judgment shall be satisfied of record.

\_\_\_\_\_  
\_\_\_\_\_

Sworn to and subscribed before me by \_\_\_\_\_ who is personally known to me or produced \_\_\_\_\_ as identification this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
State of New York  
My commission expires \_\_\_\_\_

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\_\_\_\_\_(Name of Court)  
STATE OF NEW YORK: COUNTY OF \_\_\_\_\_  
SMALL CLAIMS PART  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff,  
\_\_\_\_\_  
against  
\_\_\_\_\_  
Defendant.  
\_\_\_\_\_

**MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT**

Comes now \_\_\_\_\_ Defendant, in the above-styled  
cause, and respectfully requests that this Honorable Court set aside the Default and Default  
Judgment entered in this cause on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

I did not appear because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREFORE, Defendant moves this Honorable Court for an Order setting aside the  
Default and Default Judgment previously entered.

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant's Address and telephone number

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STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_  
TOWN OF \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

**NOTICE OF APPEAL**  
(small claims)

SIRS:

PLEASE TAKE NOTICE that I, the undersigned \_\_\_\_\_  
(plaintiff) \_\_\_\_\_ (defendant) hereby appeal to the County Court of  
\_\_\_\_\_ County from a judgment entered against me in the above entitled  
action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in the Small Claims Part of the  
above Town Court (granting) (denying) damages claimed by plaintiff for \$ \_\_\_\_\_  
in that substantial justice has not been done between the parties according to the rules and principles of substantive law.

DATED: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
plaintiff

\_\_\_\_\_  
address

\_\_\_\_\_  
telephone number

\_\_\_\_\_  
defendant

\_\_\_\_\_  
address

\_\_\_\_\_  
telephone number

TO: \*Clerk of Town Court  
\*Adverse party

\*Must be filed within 30 days from date of entry of Judgment by trial court



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STATE OF NEW YORK:  
SUPREME COURT COUNTY OF \_\_\_\_\_

_____	}	
_____ Plaintiff,	}	<b>Execution against property</b>
	}	Index No. _____
against	}	
	}	
_____ Defendant.	}	
_____	}	

THE PEOPLE OF THE STATE OF NEW YORK  
TO THE SHERIFF OF THE COUNTY OF \_\_\_\_\_  
GREETING:

WHEREAS, judgment was entered on \_\_\_\_\_, \_\_\_\_\_, in an action in the \_\_\_\_\_ Court, County of \_\_\_\_\_, in favor of \_\_\_\_\_, plaintiff, and against \_\_\_\_\_, defendant, whose last known address is \_\_\_\_\_, County of \_\_\_\_\_, State of New York, for the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars, and whereas the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars with interest thereon from the date of entry of judgment is now due thereon.

WHEREAS, a transcript of the judgment was filed on the \_\_\_\_\_ day of \_\_\_\_\_, with the Clerk of the County of \_\_\_\_\_, in which County the judgment was entered.

WE DIRECT that you satisfy the judgment out of the real and personal property of the judgment debtor, \_\_\_\_\_, and the debts due to \_\_\_\_\_, and that only the property in which the judgment debtor who is not deceased, has an interest, or the debts owed to the judgment debtor, shall be levied upon or sold thereunder, and to return this execution to the clerk of this court within sixty days after issuance unless service of this execution is made in accordance with CPLR 5231 or 5232(a), or within extensions of that time made in writing by the judgment creditor.

Dated \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Court

*This page intentionally left blank.*

STATE OF NEW YORK:

SUPREME COURT COUNTY OF \_\_\_\_\_

_____	}	
Plaintiff,	}	<b>Execution against income</b>
	}	Index No. _____
against	}	
	}	
_____	}	
Defendant.	}	
_____	}	

THE PEOPLE OF THE STATE OF NEW YORK  
TO THE SHERIFF OF THE COUNTY OF \_\_\_\_\_  
GREETING:

WHEREAS, judgment was entered on \_\_\_\_\_, \_\_\_\_\_, in an action in the \_\_\_\_\_ Court, County of \_\_\_\_\_, in favor of \_\_\_\_\_, plaintiff, and against \_\_\_\_\_, defendant, whose last known address is \_\_\_\_\_, County of \_\_\_\_\_, State of New York, for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars, and whereas the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars with interest thereon from the date of entry of judgment is now due thereon.

WHEREAS, a transcript of the judgment was filed on the \_\_\_\_\_ day of \_\_\_\_\_, with the Clerk of the County of \_\_\_\_\_, in which County the judgment was entered.

Whereas \_\_\_\_\_, the judgment debtor, will receive or is receiving from \_\_\_\_\_, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) dollars weekly, you are directed to collect in installments from each weekly payment aforesaid the sum of \_\_\_\_\_ dollars.

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF UP TO TEN PERCENT OF THE JUDGMENTS DEBTOR'S GROSS INCOME. IN CERTAIN CASES, HOWEVER, STATE OF FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THE MUCH OF THE JUDGMENT DEBTOR'S GROSS INCOME. THE JUDGMENT DEBTOR IS REFERRED TO NEW YORK CIVIL PRACTICE LAW AND RULES §5231 AND 15 UNITED STATES CODE §1671 ET. SEQ.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD.

A. AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S GROSS INCOME CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME.

B. IF A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNING ARE LESS THAN THIRTY (30) TIME THE CURRENT FEDERAL MINIMUM WAGE ( , PER HOUR), OR ( ) NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

C. A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS CANNOT BE REDUCED BELOW THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIME THE CURRENT FEDERAL MINIMUM WAGE (\$ , PER HOUR), OR (\$ ), UNDER THIS INCOME EXECUTION.

D. IF DEDUCTIONS ARE BEING MAD FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

E. IF DEDUCTIONS ARE BEING MADE FROM A JUDGEMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSE, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNING UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNING MADE UNDER THIS EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS.

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

## II. EXPLANATION OF LIMITATIONS

### DEFINITIONS:

#### DISPOSABLE EARNINGS

DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE, TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NO DEDUCTIONS FOR UNION DUES, INSURANCE PLANS, ETC.).

#### GROSS INCOME

GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

#### ILLUSTRATIONS REGARDING EARNINGS:

IF DISPOSABLE EARNINGS IS: AMOUNT TO PAY OR DEDUCT UNDER THIS INCOME EXECUTION IS:

(a) 30 TIMES FEDERAL  
MINIMUM WAGE (\$ )  
OR LESS

(b) MORE THAN 30 TIMES  
FEDERAL MINIMUM  
WAGE (\$ ) AND LESS  
THAN 40 TIMES FEDERAL  
MINIMUM WAGE (\$ )

THE LESSER OF: THE EXCESS  
OVER 30 TIMES THE FEDERAL  
MINIMUM WAGE (\$ ) IN  
DISPOSABLE EARNINGS,  
OR 10% OF GROSS EARNINGS

(c) 40 TIMES THE FEDERAL  
MINIMUM WAGE (\$ )  
OR MORE

THE LESSER OF: 25% OF  
DISPOSABLE EARNING OR 10%  
OF GROSS EARNINGS.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR §5231(I) AND CPLR §5240 IF YOU THINK THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD ACT PROMPTLY BECAUSE THE MONEY WILL BE APPLIED TO THE JUDGMENT IF YOU CLAIM THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD CONTACT YOUR EMPLOYER OR OTHER PERSON PAYING YOUR INCOME. FURTHER, YOU MAY CONSULT AN ATTORNEY, INCLUDING LEGAL AID IF YOU QUALIFY. NEW YORK STATE LAW PROVIDES TWO PROCEDURES THROUGH WHICH AN INCOME EXECUTION CAN BE CHALLENGED.

CPLR §5231(I) MODIFICATION. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER MODIFYING AN INCOME EXECUTION.

CPLR §5240 MODIFICATION OR PROTECTIVE ORDER: SUPERVISION OR ENFORCEMENT. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER DENYING, LIMITING, CONDITIONING, REGULATING, EXTENDING OR MODIFYING THE USE OF ANY POST-JUDGMENT ENFORCEMENT PROCEDURE, INCLUDING THE USE OF INCOME EXECUTIONS.

TO THE JUDGMENT DEBTOR:

PLEASE TAKE NOTICE THAT YOU SHALL COMMENCE PAYMENT OF THE INSTALLMENTS ABOVE MENTIONED TO THE ABOVE NAMED SHERIFF FORTHWITH, AND THAT UPON YOUR DEFAULT, THIS EXECUTION WILL BE SERVED UPON \_\_\_\_\_, of \_\_\_\_\_, New York.

Dated \_\_\_\_\_

\_\_\_\_\_

Clerk



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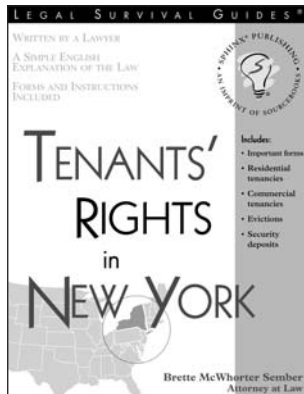
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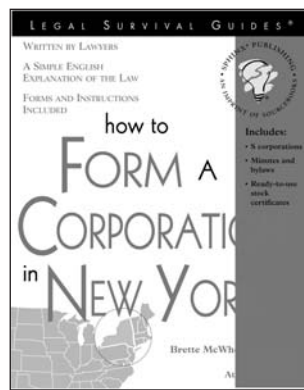
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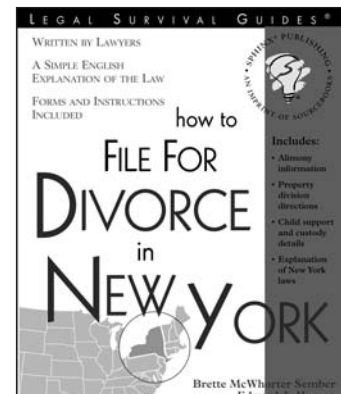
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